# STAMP DUTIES AND STAMP DUTY RESERVE TAX (

**Notes** on the Finance Acts 1996-2009 have been contributed by David R Harris, LLM, of Lincoln's Inn, Barrister.

**Commissioners for Her Majesty's Revenue and Customs**

The Commissioners for Her Majesty's Revenue and Customs integrate the former Inland Revenue and Her Majesty's Customs and Excise. References in this title to the Commissioners of Inland Revenue (however expressed) are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs: see the Commissioners for Revenue and Customs Act 2005 s 50; and see generally CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

## 1. STAMP DUTIES

## (1) INTRODUCTION

### 1001. Meaning and scope of stamp duties.

The duties dealt with in this title are those imposed by the Stamp Act 1891 or by subsequent legislation amending or directed to be construed as one with that Act[1]. Accordingly, they do not include the estate[2] or corporation duties[3] which were formerly charged, excise duties[4], postage fees and charges[5], fees payable in public offices which are collected by means of stamps[6] or social security contribution stamps (in practice no longer used)[7]. Although stamp duty reserve tax interacts with stamp duty, in that payment of stamp duty will avoid or relieve a charge to stamp duty reserve tax in respect of certain transactions, they are separate taxes[8]. Whereas a liability to stamp duty may arise in respect of instruments relating to property generally, including stock and marketable securities, stamp duty reserve tax (so long as it subsists) is imposed solely in relation to transactions in securities[9].

Stamp duties have been in force since the seventeenth century. The Stamp Act 1891 is the latest of a series of consolidating Acts, and has itself been much amended and supplemented by later enactments. Pursuant to this legislation, stamp duty is imposed at various rates upon specified categories of instrument[10] subject to a range of exemptions[11]. As 'instrument' includes every written document[12] and liability to stamp duty arises at the moment when an instrument of a kind which attracts a charge is executed[13], it has been said that stamp duty is payable on documents, not transactions[14]. This principle has been somewhat eroded by various deeming provisions[15], but is still substantially correct.

Stamp duty has been abolished in respect of many categories of instrument[16], but if a particular instrument was chargeable at the time it was executed, it remains chargeable and duty may have to be paid because of the manner in which the payment of stamp duty is enforced[17].

Except where express provision is made to the contrary, an instrument relating to property belonging to the Crown or the private property of the sovereign is to be charged with the same stamp duty as an instrument of the same kind relating to property belonging to a subject[18].

Stamp duties are under the care and management of the Commissioners of Inland Revenue ('the commissioners') and are administered by the Stamp Office[19].

1 As to the legislation which is to be construed as one with the Stamp Act 1891 see PARA 1009 note 1 post.

2 Estate duty is not chargeable on deaths on or after 13 March 1975: Finance Act 1975 s 49(1). Estate duty was replaced by capital transfer tax (ss 22(1), 51(1) (repealed)); and capital transfer tax has been replaced by inheritance tax: see the Inheritance Tax Act 1984 s 4(1); and see generally INHERITANCE TAXATION.

3 Corporation duty, which was technically a stamp duty, was imposed by the Customs and Inland Revenue Act 1885 s 11 (repealed), at a rate of 5% on the annual value or income of the property of certain bodies as a compensation to the Crown for the absence of death duties (since abolished) on such property. The yield was small, and the duty was abolished, as regards yearly periods beginning after 5 April 1959, by the Finance Act 1959 s 32 (repealed).

4 As to excise duties see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 620 et seq.

5 As to postal fees and charges see POST OFFICE vol 36(2) (Reissue) PARA 83 et seq.

6 See the Public Offices Fees Act 1879 ss 2-7 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. A statutory exemption from stamp duty does not extend to court fees payable by impressed stamps: *Re Elsie Inglis (London) Memorial Fund*[1954] 1 All ER 411, [1954] 1 WLR 407.

7 As to contribution stamps see SOCIAL SECURITY AND PENSIONS.

8 As to stamp duty reserve tax see PARA 1118 et seq post.

9 As to the prospective abolition of stamp duty reserve tax see PARA 1119 post.

10 The main charging section is the Stamp Act 1891 s 1, which imposes upon the instruments specified in Sch 1 (which has been greatly amended) the duties there specified. Part II (ss 25-111) (as amended) deals with the individual heads of charge in Sch 1 (as amended) in the alphabetical order in which they appear therein: see PARAS 1007, 1030 et seq post. As to matters applicable to instruments generally see Pt I (ss 1-17) (as amended) and PARA 1007 et seq, 1022 et seq post; and as to supplemental matters see Pt III (ss 117-125) (as amended); the text to note 18 infra; and PARAS 1007, 1018, 1117 post. The management of stamp duties is regulated by the Stamp Duties Management Act 1891: see the text to note 19 infra; and PARA 1106 et seq post. As to the various charges and the instruments in respect of which they are imposed see generally para 1018 post.

11 As to the exemptions from stamp duty see PARA 1082 et seq post.

12 Stamp Act 1891 s 122(1); Stamp Duties Management Act 1891 s 27. As to references to writing see the Interpretation Act 1978 s 5, Sch 1; and STATUTES vol 44(1) (Reissue) PARA 1388.

13 See PARA 1010 post.

14 *IRC v G Angus & Co, IRC v Lewis*(1889) 23 QBD 579 at 589, CA, per Lord Esher MR; *Wm Cory & Son Ltd v IRC*[1965] AC 1088, [1965] 1 All ER 917, HL (but see the Finance Act 1965 s 90(1); and PARA 1048 post). See also *Minister of Stamps v Townend*[1909] AC 633 at 639, PC. Contrast the majority and dissenting speeches in *Oughtred v IRC*[1960] AC 206, [1959] 3 All ER 623, HL. See also *Cohen and Moore v IRC*[1933] 2 KB 126; *Grey v IRC*[1960] AC 1, [1959] 3 All ER 603, HL; and *Fitch Lovell Ltd v IRC*[1962] 3 All ER 685, [1962] 1 WLR 1325.

15 See eg the Finance Act 1946 s 57 (as amended); and PARA 1075 post.

16 See PARAS 1002-1003 post; and as to the prospective abolition of stamp duty see also PARAS 1004-1006 post.

17 See PARA 1009 post.

18 Stamp Act 1891 s 119.

19 See the Stamp Duties Management Act 1891 ss 1, 27.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

1 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

2 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2)

Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

3 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1001 Meaning and scope of stamp duties**

NOTE 10--Stamp Act 1891 s 1 repealed: Finance Act 1999 Sch 19 para 1, Sch 20 Pt V(2). There is a charge to stamp duty reserve tax on dealings with units in unit trusts: see Sch 19 Pt II (paras 2-9); and PARA 1121A.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(1) INTRODUCTION/1002. Abolition of stamp duty on particular instruments from the year 1970 onwards.

**1002. Abolition of stamp duty on particular instruments from the year 1970 onwards.**

The stamp duties upon the following classes of instrument have been abolished in or after the year 1970:

1 (1) agreement or contract made or entered into under the Highways Acts[1]; agreement under hand (and not otherwise specifically charged)[2]; appointment of a new trustee and appointment in execution of a power of any property[3]; articles of association of a company[4];
2 (2) bill of exchange, including one issued by a bank (a 'bank note')[5]; bond of any kind not specifically charged with duty[6];
3 (3) certificate of registration for an alkali or similar work[7]; cheque[8]; contract notes[9]; covenant and any separate deed of covenant[10];
4 (4) deed of any kind whatsoever, not otherwise described[11]; document relating to chargeable transaction of capital company[12];
5 (5) insurance policy[13], life insurance policy, deferred life annuity and assignment of life policy[14];
6 (6) letter or power of attorney, and commission, factory or mandate[15];
7 (7) memorandum of an agreement under hand (and not otherwise specifically charged)[16]; memorandum of association of a company[17]; mortgage, bond, debenture and covenant (including the transfer, assignment, disposition, reconveyance, release, discharge and surrender of mortgages)[18];
8 (8) promissory note[19] (including one issued by a bank ('a bank note'))[20];
9 (9) receipt[21]; revocation of any use or trust of any property by any writing, not being a will[22];
10 (10) security for an annuity other than a superannuation annuity and for certain other periodic sums[23];
11 (11) unit trust instrument[24];
12 (12) voluntary disposition inter vivos[25] (although such an instrument may require adjudication[26]); and
13 (13) warrant of attorney[27].

Nevertheless, an instrument of one of these classes executed before the abolition of the duty cannot normally be given in evidence unless duly stamped in accordance with the duty chargeable at the time of its execution[28].

The charges to stamp duty on bearer instruments[29] and transfers of defined securities[30] are prospectively abolished by the Finance Act 1990[31]. The charge to stamp duty is prospectively abolished in certain cases, and reduced in others, by the Finance Act 1991 in relation to instruments dealing with exempt property[32].

1 Finance Act 1985 ss 85(1), 98(6), Schs 24, 27 Pt IX.

2 Finance Act 1970 s 32, Sch 7 para 1(2)(a).

3 Finance Act 1985 Schs 24, 27 Pt IX.

4 Finance Act 1970 Sch 7 para 1(2)(d).

5 Ibid Sch 7 para 2(2)(a); Finance Act 1972 ss 126(1)(a), 134(7), Sch 28 Pt XI.

6 Finance Act 1971 s 64(1)(b).

7 Finance Act 1970 Sch 7 para 1(2)(c).

8 Ibid Sch 7 para 2(2)(a).

9 Finance Act 1985 s 86; Finance Act 1987 s 49.

10 Finance Act 1985 Schs 24, 27 Pt IX.

11 Ibid Schs 24, 27 Pt IX.

12 Finance Act 1988 s 141.

13 Finance Act 1970 Sch 7 para 1(2)(b) (which did not include life insurance policies).

14 Finance Act 1989 ss 173, 187(1), Sch 17 Pt IX.

15 Finance Act 1985 Schs 24, 27 Pt IX.

16 Finance Act 1970 Sch 7 para 1(2)(a).

17 Ibid Sch 7 para 1(2)(d).

18 Finance Act 1971 s 64(1)(a), (c). The abolition of the charge under the Stamp Act 1891 s 1, Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' (as amended) does not apply as respects any instrument increasing the rent reserved by another instrument: Finance Act 1971 s 64(1)(a).

19 Finance Act 1970 Sch 7 para 2(2)(a).

20 Finance Act 1972 ss 126(1)(a), 134(7), Sch 28 Pt XI.

21 Finance Act 1970 Sch 7 para 2(2)(b).

22 Finance Act 1985 Schs 24, 27 Pt IX. The transfer of trust property pursuant to the revocation is not, however, affected by the abolition of the fixed duty on the instrument of revocation.

23 Finance Act 1971 s 64(1)(a).

24 Finance Act 1988 s 140.

25 Finance Act 1985 s 82, Sch 27 Pt IX.

26 See PARA 1111 post.

27 Finance Act 1985 Schs 24, 27 Pt IX. Other charges abolished by Schs 24, 27 Pt IX related to Scotland only.

28 See PARA 1007 post.

29 Ie the charge under the Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' (as added and amended): see PARA 1065 et seq post.

30 For the meaning of 'defined securities' see PARA 1005 post.

31 See the Finance Act 1990 ss 107, 108, 111(1); and PARAS 1004-1005 post.

32 See the Finance Act 1991 ss 110, 111; and PARA 1006 post. For the meaning of 'exempt property' see PARA 1006 text and note 5 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

4 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

5 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$MV - SL$

6 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1002 Abolition of stamp duty on particular instruments from the year 1970 onwards**

TEXT AND NOTES--Stamp Act 1891 s 1, Sch 1, Finance Act 1970 s 32, Sch 7, Finance Act 1971 s 64, Finance Act 1972 s 126, Finance Act 1988 ss 140, 141, Finance Act 1989 s 173 repealed: Finance Act 1999 Sch 19 para 1, Sch 20 Pt V(2).

**1003. Abolition of stamp duty on particular instruments before the year 1970.**

The stamp duties upon the following classes of instrument were abolished before the year 1970:

14 (1) admissions to professions[1]; affidavit[2]; application for incorporation under the provisions of the Charitable Trustees Incorporation Act 1872 which have now been repealed[3]; appointment of gamekeeper[4]; appraisement[5]; apprenticeship instrument[6]; articles of clerkship to a solicitor[7]; award[8];

15 (2) bill of lading[9]; bond given pursuant to the directions of (a) any Act[10]; or (b) the Commissioners of Inland Revenue relating to customs or excise[11]; bond on obtaining letters of administration[12]; bonus issues of securities[13];

16 (3) certificate in relation to claims for drawback[14]; certificate of incorporation under the repealed provisions of the Charitable Trustees Incorporation Act 1872[15]; certificate to practise as a solicitor or notary[16]; charterparty[17]; commission in the army or navy[18]; commission of lunacy[19]; conditional surrender of copyhold[20]; congé d'elire[21]; constat of letters patent in respect of an honour, dignity or franchise[22]; contract of service in any office or employment[23]; copies or extracts[24]; copyhold instrument[25];

17 (4) debenture in relation to claims for drawback[26]; decreet arbitral[27]; delivery order[28]; deputation of gamekeeper[29]; dock warrant[30]; docket on passing an instrument under the Great Seal[31];

18 (5) exemplification of letters patent relating to an honour, dignity or franchise[32];

19 (6) faculty or dispensation for a Lambeth degree[33]; foreign or colonial share certificate as such[34];

20 (7) grant of copyhold[35]; grant of custody of a mentally disordered person[36]; grant of name or arms, honour, dignity or franchise[37];

21 (8) letter of allotment or of renunciation[38]; letter of marque or reprisal[39]; letters patent relating to an honour, dignity or franchise[40]; licence for a house for the reception of mentally disordered persons[41]; licence for marriage[42]; licence to keep a retreat for habitual drunkards[43]; licence under an ecclesiastical seal to hold a church office or to licence a building for divine service or marriages[44];

22 (9) memorandum of a contract of service in any office or employment[45]; memorial as to public registering of deeds[46];

23 (10) notarial act[47];

24 (11) passport[48]; protest of bill of exchange or promissory note[49];

25 (12) scrip certificate or scrip[50]; sea insurance policy as such[51]; statutory declaration[52]; transfer of cost book mine shares[53];

26 (13) valuation[54]; voting paper at meeting of company or society[55];

27 (14) warrant for goods[56]; and warrant under the sign manual[57].

Certain compositions or payments in consideration of exemption from stamp duty which were payable by the Bank of England in respect of the issue of banknotes and bank post bills have also been abolished[58].

Nevertheless, an instrument of one of these classes executed before the abolition of the duty cannot normally be given in evidence unless duly stamped in accordance with the duty chargeable at the time of its execution[59].

1 Finance Act 1895 s 10; Finance Act 1947 s 74(11), Sch II Pt I; Finance Act 1949 s 35(1), Sch 8 Pt I para 1.

2 Ibid Sch 8 Pt I para 2.

3 Ibid s 35(2), Sch 8 Pt II para 3.

4 Ibid ss 35(1), 52(10), Sch 8 Pt I para 14, Sch 11 Pt V.

5 Ibid Sch 8 Pt I para 3.

6 Ibid Sch 8 Pt I para 4; and see PARA 1105 head (5) post.

7 Ibid Sch 8 Pt I para 5; and see PARA 1105 head (6) post.

8 Ibid Sch 8 Pt I para 6.

9 Ibid Sch 8 Pt I para 7.

10 Finance Act 1905 s 5(1); Finance Act 1949 Sch 8 Pt I para 8.

11 Ibid Sch 8 Pt I para 8; and see PARA 1105 head (7) post.

12 Ibid Sch 8 Pt I para 8. There is also an exception for guarantees on the grant of administration: see PARA 1105 head (18) post.

13 Ibid s 34(1).

14 Finance Act 1907 s 11.

15 Finance Act 1949 Sch 8 Pt II para 3.

16 Solicitors, Public Notaries, etc Act 1949 s 1, Sch 2.

17 Finance Act 1949 Sch 8 Pt I para 9.

18 Revenue Act 1903 s 9.

19 Finance Act 1949 Sch 8 Pt I para 10.

20 Ibid Sch 8 Pt I para 11.

21 Finance Act 1938 s 51.

22 Finance Act 1949 Sch 8 Pt I para 15, Sch 11 Pt V.

23 Finance Act 1964 s 23(1).

24 Finance Act 1949 Sch 8 Pt I para 12. As to the duty on duplicates and counterparts see PARA 1079 post.

25 Ibid Sch 8 Pt I para 13.

26 Finance Act 1907 s 11.

27 Finance Act 1949 Sch 8 Pt I para 6, Sch 11 Pt V.

28 Finance Act 1905 s 5(2).

29 Finance Act 1949 Sch 8 Pt I para 14.

30 Ibid Sch 8 Pt I para 27.

31 Finance Act 1938 s 51.

32 Finance Act 1949 Sch 8 Pt I para 15.

33 Finance Act 1948 ss 75, 82(10), Sch 11 Pt I.

34 Customs and Inland Revenue Act 1893 s 4(1).

35 Finance Act 1949 Sch 8 Pt I para 16.

36 Ibid Sch 8 Pt I para 16.

37 Finance Act 1937 s 30; Finance Act 1938 s 51; Finance Act 1949 Sch 8 Pt I para 16.

38 Ibid Sch 8 Pt I para 17, Sch 11 Pt V: see PARA 1098 post. See also the Finance Act 1985 s 85(1), Schs 24, 27 Pt IX. As to stamp duty reserve tax chargeable on an agreement to transfer securities comprised in a renounceable letter of allotment see PARA 1121 post.

39 Finance Act 1949 Sch 8 Pt I para 19.

40 Finance Act 1937 s 30; Finance Act 1938 s 51; Finance Act 1949 Sch 11 Pt V.

41 Ibid Sch 8 Pt I para 20.

42 Ibid Sch 8 Pt I para 20, Sch 11 Pt V.

43 Ibid Sch 8 Pt I para 20.

44 Ibid Sch 8 Pt I para 20.

45 Finance Act 1964 s 23(1).

46 Finance Act 1949 Sch 8 Pt I para 21.

47 Ibid Sch 8 Pt I para 22.

48 Ibid Sch 8 Pt I para 23.

49 Ibid Sch 8 Pt I para 23.

50 Ibid Sch 8 Pt I para 17, Sch 11 Pt V. See also PARA 1098 post; and see the Finance Act 1985 Schs 24, 27 Pt IX.

51 Finance Act 1959 ss 30(4), 37(5), Sch 8 Pt II.

52 Finance Act 1949 Sch 8 Pt I para 2, Sch 11 Pt V.

53 Ibid Sch 8 Pt I para 25.

54 Ibid Sch 8 Pt I para 3, Sch 11 Pt V.

55 Ibid Sch 8 Pt I para 26.

56 Ibid Sch 8 Pt I para 27.

57 Finance Act 1938 s 51.

58 Currency and Bank Notes Act 1928 ss 6(4), 13(4), Schedule; Finance Act 1949 Sch 8 Pt II para 1, Sch 11 Pt V. As to the abolition of corporation duty see PARA 1001 note 3 ante.

59 See PARA 1007 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act

2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

7 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

8 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

9 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1003 Abolition of stamp duty on particular instruments before the year 1970

NOTES 23, 45--Finance Act 1964 repealed: Statute Law (Repeals) Act 2008.

NOTE 33--Finance Act 1948 s 75 repealed: Statute Law (Repeals) Act 2008.

TEXT AND NOTE 34--Customs and Inland Revenue Act 1893 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(1) INTRODUCTION/1004. Prospective abolition of stamp duty on bearer instruments.

**1004. Prospective abolition of stamp duty on bearer instruments.**

The charge to stamp duty on bearer instruments[1] is prospectively abolished in respect of (1) certain instruments[2] issued on or after the abolition day[3]; or (2) certain instruments[4] if the stock[5] constituted or transferable by means of such an instrument is transferred on or after the abolition day[6].

This provision has not, however, been brought into force[7].

1 Ie under the Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' (as added and amended): see PARA 1066 et seq post.

2 Ie instruments falling within the Finance Act 1963 s 60(1): see PARA 1068 post. For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1990 s 111(2)).

3 Ibid ss 107(1), (2), 132, Sch 19 Pt VI. 'The abolition day' means such day as may be appointed by the Treasury by order made by statutory instrument: s 111(1). At the date at which this volume states the law, no such order had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Ie instruments falling within the Finance Act 1963 s 60(2): see PARA 1068 post.

5 For the meaning of 'stock' see PARA 1029 note 4 post (definition applied by virtue of the Finance Act 1990 s 111(2)).

6 Ibid s 107(1), (3), Sch 19 Pt VI. As to the prospective abolition of the charge in relation to Northern Ireland see s 107(4).

7 See note 3 supra.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

10 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a

partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

11 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

12 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals,

do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1004 Prospective abolition of stamp duty on bearer instruments**

TEXT AND NOTES--Replaced. Stamp duty is not chargeable under the Finance Act 1999 Sch 15 para 1 where the instrument is issued on or after the abolition day, or under Sch 15 para 2 where the stock constituted by or transferable by means of the instrument is transferred on or after that day: Finance Act 1990 s 107 (substituted by the Finance Act 1999 Sch 16 para 12).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(1) INTRODUCTION/1005. Prospective abolition of stamp duty on transfer or vesting of defined securities.

**1005. Prospective abolition of stamp duty on transfer or vesting of defined securities.**

Where defined securities are transferred to or vested in a person by an instrument[1], provision has been made whereby stamp duty is not be to chargeable on the instrument[2] if the instrument (1) is executed[3] in pursuance of a contract made on or after the abolition day[4]; or (2) in relation to depositary receipts[5] or clearance services[6], or an instrument which does not relate to either and is not executed in pursuance of a contract[7], is executed on or after that day[8].

For these purposes, 'defined securities' means (a) stocks[9], shares or loan capital[10]; (b) interests in, or dividends or other rights arising out of, stocks, shares or loan capital; (c) rights to allotments of or to subscribe for, or options to acquire or to dispose of, stocks, shares or loan capital; and (d) units under a unit trust scheme[11].

This provision has not, however, been brought into force[12].

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1990 s 111(2)).

2 Ibid s 108(1).

3 For the meaning of 'executed' see PARA 1007 note 5 post (definition applied by virtue of ibid s 111(2)).

4 Ibid s 108(7). For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

5 Ie an instrument which falls within the Finance Act 1986 s 67(1) or (9) (as prospectively repealed) (see PARA 1070 post): Finance Act 1990 s 108(8)(a).

6 Ie an instrument which falls within the Finance Act 1986 s 70(1) or (9) (as prospectively repealed) (see PARA 1072 post): Finance Act 1990 s 108(8)(a).

7 Ie an instrument which does not fall within the Finance Act 1986 s 67(1) or (9) or s 70(1) or (9) (as prospectively repealed): Finance Act 1990 s 108(8)(b).

8 Ibid s 108(8).

9 For the meaning of 'stock' see PARA 1029 note 4 post (definition applied by virtue of ibid s 111(2)).

10 'Loan capital' means (1) any debenture stock, corporation stock or funded debt, by whatever name known, issued by a government body or a body corporate or other body of persons (which here includes a local authority and any body whether formed or established in the United Kingdom or elsewhere); (2) any capital raised by a government, or by such a body as is mentioned in head (1) supra, if the capital is borrowed or has the character of borrowed money, and whether it is in the form of stock or any other form; (3) stock or marketable securities issued by a government: ibid s 108(3). 'Government' means the government of the United Kingdom or of Northern Ireland or of any country or territory outside the United Kingdom (s 108(6)); and references to a government include references to a government department, including a Northern Ireland department (s 108(5)). For the meaning of 'marketable security' see PARA 1029 note 5 post; and for the meaning of 'United Kingdom' see PARA 1007 note 6 post (definitions applied by virtue of s 111(2)).

11 Ibid s 108(2). For these purposes, 'unit' and 'unit trust scheme' have the same meanings as they had in the Finance Act 1946 Pt VII (ss 52-57) (as amended) immediately before the abolition day (see PARA 1029 note 4 post): Finance Act 1990 s 108(4).

12 See note 4 supra.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

13 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

14 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the

transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

15 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1005 Prospective abolition of stamp duty on transfer or vesting of defined securities**

TEXT AND NOTES--Finance Act 1990 s 108(1)-(6) now s 108(1) (substituted by Finance Act 2003 Sch 20 para 5; and amended by Finance Act 2008 Sch 32 para 19). Stamp duty is not chargeable under the Finance Act 1999 Sch 13 (see PARA 1027): 1990 Act s 108(1).

**1006. Prospective exemption or reduction in relation to exempt property.**

Where stamp duty would otherwise be chargeable[1] on an instrument executed (1) in pursuance of a contract made on or after the abolition day[2]; or (2) on or after that day, if not executed in pursuance of a contract[3], and the property concerned consists entirely of exempt property, that duty is not to be so chargeable on the instrument[4]. For these purposes, 'exempt property' is property other than land, an interest in the proceeds of the sale of land held on trust for sale, or a licence to occupy land[5].

Where conveyance on sale duty[6] is chargeable on an instrument executed as mentioned in heads (1) or (2) above, and part of the property consists of such exempt property, then the consideration in respect of which duty would otherwise be charged must be apportioned, on such basis as is just and reasonable, as between the part of the property which consists of exempt property and the part which does not[7]. The instrument is to be charged only in respect of the consideration attributed to such of the property as is not exempt property[8].

These provisions have, not, however, been brought into force[9].

1 Ie under any of the following headings: (1) the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended) (see PARA 1027 et seq post); (2) Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described' (see PARA 1077 post); (3) Sch 1, 'Declaration of any use or trust' (as amended) (see PARA 1078 post); (4) Sch 1, 'Partition or Division' (see PARA 1080 post); (5) Sch 1, 'Release or Renunciation' (as amended) (see PARA 1081 post); or (6) Sch 1, 'Surrender' (as amended) (see PARA 1081 post): Finance Act 1991 s 110(3) (amended by the Finance Act 1994 s 258, Sch 26 Pt VII).

2 For these purposes, 'the abolition day' is such day as may be appointed under the Finance Act 1990 s 111(1) (abolition of stamp duty for securities etc: see PARA 1004 note 3 ante): Finance Act 1991 s 110(7). At the date at which this volume states the law, no such day had been appointed.

3 Ibid s 110(6).

4 Ibid s 110(1), (2), (4) (s 110(4) amended by the Finance Act 1994 Sch 26 Pt VII).

5 Finance Act 1991 s 110(5).

6 Ie stamp duty under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 post.

7 Finance Act 1991 s 111(1), (2)(a), (4). 'Exempt property' and 'the abolition day' have the same meanings as in s 110: s 111(3), (5).

8 Ibid s 111(2)(b).

9 See note 2 supra.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act

2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

16 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

17 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

18 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1006 Prospective exemption or reduction in relation to exempt property**

TEXT AND NOTES 1-4--Replaced. Where stamp duty would otherwise be chargeable on an instrument under any of the provisions of the Finance Act 1999 Sch 13, no duty is so chargeable if the property consists entirely of exempt property: Finance Act 1991 s 110(1) (substituted by Finance Act 1999 Sch 14 para 25).

TEXT AND NOTE 5--Words 'an interest ... on trust for sale' repealed: Finance Act 1991 s 110(5) (amended by Trusts of Land and Appointment of Trustees Act 1996 Sch 4).

NOTE 6--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(1) INTRODUCTION/1007. Enforcement.

**1007. Enforcement.**

The need to stamp an instrument[1] arises from the inability to rely upon, enforce or register the instrument unless it is duly stamped[2]. As penalties are imposed for late stamping[3], there is a financial incentive to stamp the instrument within the time allowed by the legislation rather than risk having to pay the duty and the penalty in the event of a subsequent dispute regarding the transaction embodied in the instrument or a need to establish title conferred by the instrument at some later date.

Subject to certain provisions as to the payment of duties and penalties in court[4], an instrument executed[5] in any part of the United Kingdom[6], or relating, wherever executed, to[7] any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, may not, except in criminal proceedings[8], be given in evidence, or be available for any purpose whatever, unless it is duly stamped[9] in accordance with the law in force at the time when it was first executed[10]. Judges, arbitrators and referees have a duty to take notice of any insufficiency of stamp on instruments produced to them in civil proceedings[11] and a person whose office it is to enrol or register an instrument chargeable with stamp duty and who does so when it is not duly stamped incurs a fine of £10[12]. However, English courts take no notice of foreign revenue law unless the absence of a stamp required by the proper law of the instrument renders it void and not merely inadmissible[13]. Any condition of sale framed with the view of precluding objection or requisition on the ground of absence or insufficiency of stamp upon any instrument is void[14].

All the facts and circumstances affecting the liability of an instrument to stamp duty or the amount of the duty with which it is chargeable must be fully and truly set forth in the instrument[15], and a person who, with intent to defraud Her Majesty, executes an instrument not complying with this requirement[16], or, being employed or concerned in or about the preparation of an instrument, neglects or omits fully and truly to set forth in it all the facts and circumstances[17], incurs a fine of £10[18]. Every public officer[19] having custody of rolls, books, records, papers, documents or proceedings the inspection of which may tend to secure any stamp duty or prove or lead to the discovery of any fraud or omission in relation to any duty must at all reasonable times permit a person authorised by the Commissioners of Inland Revenue to inspect them and take extracts and notes without fee, and in case of refusal incurs for every offence a fine of £10[20].

The Crown can recover the duty on bearer instruments and the duty payable in default of production of an instrument where property is vested on sale or purchased under a statutory power by civil action[21]. Similarly, anyone who has received a sum of money as or for any duty and does not apply the money to the due payment of the duty but improperly withholds or detains it is accountable for the amount of that duty as a debt from him to the Crown and may be sued for its recovery[22].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 See the text and notes 5-10 infra.

3 See PARAS 1020-1021 post.

4 See the Stamp Act 1891 s 14(1)-(3); and CIVIL PROCEDURE vol 11 (2009) PARA 959.

5 For these purposes, a deed is treated as executed when it is delivered or, if it is delivered subject to conditions, when the conditions are fulfilled; but subject to this, 'executed' and 'execution', with reference to

instruments not under seal, mean signed and signature: Stamp Act 1891 s 122(1), (1A) (respectively amended and added by the Finance Act 1994 s 239(1)). The same definitions apply for the purposes of the Stamp Duties Management Act 1891: see s 27 (amended by the Finance Act 1994 s 239(2)). As to the meaning of 'execution' in relation to delivery in escrow, it seems that s 239 clarified the position in Scotland but merely confirmed the position in England: see *Terrapin International Ltd v IRC* [1976] 2 All ER 461, [1976] 1WLR 665; *BTR plc v IRC* [1986] STC 433.

6 'United Kingdom' means Great Britain (ie England, Scotland and Wales) and Northern Ireland: see *Griffin v Weatherby* (1868) LR 3 QB 753; Irish Free State (Consequential Adaptation of Enactments) Order 1923, SR & O 1923/405, art 2. The similar definition in the Interpretation Act 1978 s 5, Sch 1 (see STATUTES vol 44(1) (Reissue) PARA 1383) is expressed to apply only in respect of Acts passed on or after 12 April 1927: s 22(1), Sch 2 para 4(1)(a).

7 'Relating to' has received a wide interpretation: *IRC v Maple & Co (Paris) Ltd* [1908] AC 22 at 26, HL, per Lord Macnaghten; *Faber v IRC* [1936] 1 All ER 617.

8 As to the meaning of 'criminal proceedings' see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 2.

9 'Stamped', with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto: Stamp Act 1891 s 122(1). The same definition appears in the Stamp Duties Management Act 1891 s 27. In practice, adhesive stamps are no longer used. 'Duly stamped' means stamped in accordance with the enactments relating to stamp duty in force when the instrument was first executed: Stamp Act 1891 ss 2, 14(4); and see PARA 1022 post. The Commissioners of Inland Revenue may make regulations providing that an instrument which is of a kind specified in them must be certified to be an instrument of that kind and is not to be treated as duly stamped if not so certified: Finance Act 1985 s 87(1). At the date at which this volume states the law, no such regulations had been made. As to the admissibility of instruments bearing adjudication stamps see PARA 1111 post; as to instruments required to be stamped with a 'particulars produced' stamp see PARA 1026 post; and as to exemption from stamp duty by certification see PARA 1083 post.

10 Stamp Act 1891 s 14(4). See *Marx v Estates and General Investments Ltd* [1975] 3 All ER 1064, [1976] 1 WLR 380; CIVIL PROCEDURE vol 11 (2009) PARA 959; SALE OF LAND vol 42 (Reissue) PARA 305. For these purposes, in relation to instruments (1) executed on or after 13 March 1984 which were stamped on or after 20 March 1984, the law in force at the execution of such an instrument is deemed to be that as varied in accordance with the Finance Act 1984 s 109(1), (2) (amendment of stamp duty threshold for conveyances on sale: see PARA 1027 post) or s 110(2), (3) (amendments to the Finance Act 1981 s 107: see PARA 1053 post) (Finance Act 1984 ss 109(3), 110(4)); (2) executed on or after 19 March 1985 which were stamped on or after 26 March 1985, the law in force at the time of execution of such an instrument is deemed to be that as varied in accordance with the Finance Act 1985 s 82 (abolition of stamp duty on voluntary dispositions inter vivos: see PARA 1002 head (12) ante) and s 85, Sch 24 (repeal of certain fixed duties: see PARA 1002 heads (1), (3)-(4), (6), (9), (13) ante) (ss 82(7), 85(4)); (3) executed on or after 16 March 1988 which were not stamped before 22 March 1988, the law in force at the time of execution of such an instrument is deemed to be that as varied in accordance with the Finance Act 1988 s 140 (abolition of stamp duty on unit trust instruments: see PARA 1002 head (11) ante) or s 141 (abolition of stamp duty on documents relating to transactions of capital companies: see PARA 1002 head (4) ante) (ss 140(3), 141(3)); (4) executed on or after 20 December 1991 and before 16 January 1992 and not stamped before 16 January 1992, the law in force at the time of execution of such an instrument is deemed to be that as varied in accordance with the Stamp Duty (Temporary Provisions) Act 1992 s 1(1) (temporary raising of stamp duty threshold for conveyances on sale: see PARA 1105 heads (a)-(b) post) (s 1(3)); and (5) executed on or after 16 March 1993 and before 23 March 1993 and not stamped before 23 March 1993, the law in force at the time of execution of such an instrument is deemed to be that as varied in accordance with the Finance Act 1993 s 201(1) (increase in stamp duty threshold for conveyances on sale: see PARA 1027 post) (s 201(3)). Instruments produced to the inland revenue authorities in support of a claim to relief or exemption from income tax, capital transfer tax etc must be duly stamped. A bill of exchange executed before stamp duty on bills of exchange was abolished (see PARA 1002 ante) and which is unstamped or improperly stamped may be received in evidence on payment of the duty and penalties: see the Finance Act 1933 s 42.

11 See *Mattocks v Babcock and Wilcox Ltd* (1958) Times, 29 January. See also CIVIL PROCEDURE vol 11 (2009) PARA 959.

12 Stamp Act 1891 s 17. As to the duty of Land Registry officials to see that documents on a registration application are duly stamped see the Land Registration Act 1925 s 14(3); the Land Registration Rules 1925, SR & O 1925/1093, r 95. A bill of sale is not to be registered unless the original, duly stamped, is produced: Stamp Act 1891 s 41. See also PARA 1116 post. As to the recovery of fines see PARA 1117 post.

13 See further CONFLICT OF LAWS.

14 Stamp Act 1891 s 117. Every contract, arrangement or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence or insufficiency is also void: s 117. As to the right of a purchaser to have all documents forming the vendor's title duly stamped see SALE OF LAND vol 42 (Reissue) PARA 91.

15 Stamp Act 1891 s 5.

16 Ibid s 5(a).

17 Ibid s 5(b).

18 Ibid s 5. As to the recovery of fines see PARA 1117 post. Where there is no fraud, s 5 should not be used for proceedings designed to test a point of law: *A-G v Cohen* [1937] 1 KB 478, [1937] 1 All ER 27, CA. A person making a statutory declaration for the purpose of assessment of stamp duty on an instrument by the commissioners is relieved, on payment of the duty chargeable upon the instrument to which it relates, from any fine or disability to which he may be liable by reason of the omission to state truly in the instrument any fact or circumstance required by the Stamp Act 1891 to be stated in it: s 12(6)(c); and see PARA 1111 note 2 post.

19 'Public officer' includes, as respects a unit trust scheme, the trustees and managers, their agents, and their or their agents' officers or servants: Finance Act 1946 s 56(1). Section 56(1) is prospectively repealed by the Finance Act 1990 s 109 as from a day to be appointed by statutory instrument: see s 109(6)(a); and PARA 1075 note 3 post. At the date at which this volume states the law, no such day had been appointed. As to the duty of trustees and managers of unit trust schemes to keep records see PARA 1116 post. As to stamp duty on unit trust documents see PARA 1074 et seq post. For the meaning of 'public officer' generally see *Henly v Lyme Corpn* (1829) 5 Bing 91 at 107; *Beeston and Stapleford UDC v Smith* [1949] 1 KB 656, [1949] 1 All ER 394, DC; *Graham v White (Inspector of Taxes)* [1972] 1 All ER 1159, [1972] 1 WLR 874; *Re A Company* [1980] Ch 138, [1980] 1 All ER 284, CA (revsd on other grounds sub nom *Re Racal Communications Ltd* [1981] AC 374, [1980] 2 All ER 634, HL). For the meaning of 'unit trust scheme' see PARA 1029 note 4 post.

20 Stamp Act 1891 s 16.

21 See PARAS 1050, 1068 post.

22 Stamp Duties Management Act 1891 s 2(1). This applies to a solicitor who has charged his client for the duty, as well as to public officials: *Lord Advocate v Gordon* 1901 8 SLT 439. The commissioners may sue out of the High Court a writ of summons commanding any such person to deliver an account of every sum of money so received by him and withheld or detained, and to pay the money to them, together with the costs of the proceedings, or to show cause to the contrary; and if cause is shown the court must make such order as seems just to the court: Stamp Duties Management Act 1891 s 2(2), (3).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

19 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a

partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

20 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

21 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals,

do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1007 Enforcement**

TEXT AND NOTES 4-10--These provisions are extended to interest also (see PARA 1020) and operate by reference to the law in force at the time when the instrument was executed (not 'first executed'): Stamp Act 1891 s 14(1)-(4) (amended by the Finance Act 1999 Sch 12 para 3).

There is no rule that an unstamped document may be used against a party who ought to have had it stamped but has failed to do so; and secondary evidence of an unstamped document may not be given: *Re Brown and Root McDermott Fabricators Ltd's Application* [1996] STC 483. The Inland Revenue is nevertheless entitled to rely on unstamped documents produced in discharge of the taxpayer's obligations under the Stamp Act 1891 s 5 (see TEXT AND NOTES 15-18): *Parinv (Hatfield) Ltd v IR*C [1998] STC 305, CA. See, however, *BMBF (No 24) Ltd v IRC* [2002] EWHC 2466 (Ch), [2002] STC 1450 where (1) evidence as to the existence of a bill of sale, kept outside the United Kingdom for stamp duty purposes, was not accepted for the purpose of showing that the bill was delivered in accordance with the contractual terms; and (2) any right of estoppel against a contracting party was not accepted.

Where an instrument which is chargeable with stamp duty in Great Britain and Northern Ireland has been stamped in either of those parts of the United Kingdom, the instrument is, to the extent of the duty it bears, deemed to be stamped in the other part of the United Kingdom, but if the stamp duty chargeable on the instrument in that other part of the United Kingdom exceeds the stamp duty with which it has already been stamped, it is not to be regarded as duly stamped until the excess is paid (within 30 days of the receipt of the instrument in that part of the United Kingdom): Finance Act 1998 s 150(1), (2).

NOTE 10--Finance Act 1933 s 42 amended by the Finance Act 1999 Sch 20 Pt V(1), except in relation to instruments relating to units under unit trust schemes (see PARA 1121A).

TEXT AND NOTES 11, 12--The sanction is now a penalty not exceeding £300: 1891 Act s 17 (amended by the Finance Act 1999 Sch 17 para 3(5)). Land Registration Act 1925 repealed and replaced by the Land Registration Act 2002; see LAND REGISTRATION.

TEXT AND NOTES 15-18--The sanction is now a penalty not exceeding £3,000: 1891 Act s 5 (amended by the Finance Act 1999 Sch 17 para 3(2)).

TEXT AND NOTES 19, 20--The sanction is now a penalty not exceeding £300: 1891 Act s 16 (amended by the Finance Act 1999 Sch 17 para 3(4)). Finance Act 1946 s 56 repealed: Finance Act 1999 Sch 20 Pt V(5).

NOTE 22--Stamp Duties Management Act 1891 s 2(2), (3) repealed: Finance Act 1999 Sch 18 para 6, Sch 20 Pt V(4).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(1) INTRODUCTION/1008. Territorial scope of stamp duties.

**1008. Territorial scope of stamp duties.**

An instrument is chargeable to stamp duty if it is executed in the United Kingdom or relates to any property situate, or to any matter or thing done or to be done, in the United Kingdom[1]. If, however, part of an instrument executed abroad relates to a distinct matter in the United Kingdom and part does not, it seems that only the former part will be chargeable[2]. An instrument to be acted on abroad will be chargeable if executed in the United Kingdom[3]. Similarly, a conveyance executed in the United Kingdom of land in another country is chargeable and must be stamped if it is to be relied upon in the United Kingdom[4].

An instrument chargeable both in Great Britain and in the Republic of Ireland which has been stamped in one of those countries is deemed to be stamped in the other country up to the amount of the duty it bears, but must be stamped for any excess[5]. In 1921 the Government of Northern Ireland began to levy its own stamp duties with a similar relief from double duty[6], but the overall responsibility for the administration of stamp duties in Northern Ireland, previously the concern of the Ministry of Finance in Belfast, was with effect on and from 1 January 1974 transferred to the Commissioners of Inland Revenue[7].

1 See *IRC v Maple & Co (Paris) Ltd* [1908] AC 22, HL, where the territorial limitations contained in the provision which renders unstamped instruments unavailable in evidence (see the Stamp Act 1891 s 14(4); and PARA 1007 ante), were relied on as showing that a conveyance executed in France of property in France was subject to stamp duty where the consideration consisted of shares in an English company; *Faber v IRC* [1936] 1 All ER 617. An agreement entered into between persons living abroad with regard to property abroad does not require an English stamp if it does not relate to any matter or thing done or to be done in the United Kingdom: *Gilchrist v Herbert* (1872) 26 LT 381. As to the disregard by the English courts of foreign revenue law see PARA 1007 ante; as to the stamping of instruments executed abroad see PARA 1021 post; and as to the calculation of rates of exchange for stamp duty purposes see PARA 1043 post. For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

2 Cf the Stamp Act 1891 s 4(a); and PARA 1015 post.

3 *Stonelake v Babb* (1770) 5 Burr 2673.

4 *Re Wright* (1855) 11 Exch 458. As to transfers of shares registered in a register abroad or in an overseas branch register see COMPANIES.

5 Relief in Respect of Double Taxation (Irish Free State) Declaration 1923, SR & O 1923/406, Schedule Pt III (made under the Irish Free State (Consequential Provisions) Act 1922 (Session 2) s 5). The operation of the relief is not affected by the fact that the Republic of Ireland is no longer part of Her Majesty's dominions: Ireland Act 1949 s 3(1)(a)(iii).

6 Government of Ireland Act 1920 s 29.

7 See the Northern Ireland (Modification of Enactments) (No 1) Order 1973, SI 1973/2163, art 4(1) (made under the Northern Ireland Constitution Act 1973 ss 39, 41(2)).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act

2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

22 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

23 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

24 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1008 Territorial scope of stamp duties**

TEXT AND NOTES--An instrument executed outside the United Kingdom and relating to United Kingdom property is nevertheless required to be stamped as a conveyance on sale, and the 30-day period of grace (see PARA 1020) does not apply: *Parinv (Hatfield) Ltd v IR*C [1998] STC 305, CA.

**1009. Construction of stamp duty provisions.**

Most of the statutory provisions concerning stamp duty which have been enacted since the Stamp Act 1891 are to be construed as one with that Act[1]. The principles applicable to the interpretation of statutes and, in particular, of tax legislation would seem to apply equally to stamp duty legislation. Although some of the propositions set out below have been said to be of particular relevance in this context, many of them come from relatively old cases and must, therefore, be considered in the light of modern trends in statutory interpretation[2].

It has been said that in construing stamp duty provisions, many of which are to be construed as one, strict attention must be paid to the actual words used by the legislature, but the words themselves must be understood in a 'popular' sense, that is, the sense which persons conversant with the subject matter with which the statute is dealing would attribute to them[3], and, although no considerations as to what might be reasonable on the one hand, or oppressive on the other, can affect the conclusion[4], ambiguous words are construed in favour of the person liable to the duty[5]. Where a particular instrument falls within the general terms of a head of charge, the onus of proving that it is nevertheless within an exemption from that head lies on the person alleging the exemption[6]. There is no general rule that ambiguities in the wording of the exemption should be construed in his favour[7]. An exemption in general words is limited to the scope of the Act granting it[8].

As stamp duty is imposed upon instruments and not upon transactions[9], the fact that it may be possible to devise a means for effecting a transaction without resort to an instrument is no ground for straining the words of the statute in order to prevent such means of escaping liability[10]. However, the court takes every means of defeating an attempt to evade a general liability by a provision in a private Act of Parliament the effect of which might easily pass unnoticed[11].

Decisions of the Court of Session in Scotland on revenue statutes are normally followed by the English courts[12].

1 The following provisions are to be construed as one with the Stamp Act 1891: the Finance Act 1899 Pt II (s 5) (as amended) (s 14); the Finance Act 1907 Pt II (s 7) (as amended) (s 30(2)); the Revenue Act 1909 Pt II (s 8) (s 12(1)); the Finance Act 1930 Pt IV (s 42) (as amended) (s 53(4)); the Finance Act 1946 Pt VII (ss 52-57) (as amended) (s 67(7)); the Finance Act 1947 Pt VI (s 57) (as amended and prospectively repealed) (s 74(7)); the Finance Act 1948 Pt VII (s 74) (as prospectively repealed) (s 82(6)); the Finance Act 1949 Pt IV (ss 35-36) (as amended) (s 52(5)); the Finance Act 1952 s 74 (as amended) (s 74(5)); the Finance Act 1953 s 31 (as amended) (s 31(3)); the Finance Act 1958 Pt VI (ss 34, 35) (as amended) (s 40(2)(f)); the Finance Act 1959 Pt IV (s 30) (as amended) (s 37(2)(d)); the Finance Act 1960 s 74 (as amended) (s 74(9)); the Finance Act 1963 Pt IV (ss 55-67) (as amended) (s 73(4)); the Finance Act 1964 s 23 (s 23(3)); the Finance Act 1965 s 90 (as amended) (s 90(6)); the Finance Act 1966 Pt VII (ss 45-53) (as amended), so far as relates to stamp duties (s 53(2)); the Finance Act 1967 Pt V (ss 27-30) (as amended) (s 45(3)(g)); the Finance Act 1970 Pt III (ss 32-36) (as amended), so far as relates to stamp duties (s 36(5)); the Finance Act 1973 Pt V (s 50) (as amended) (s 59(3)(e)); the Finance Act 1974 s 49(1), Sch 11 (as amended) (s 57(3)(d)); the Finance Act 1976 s 127 (as amended) (s 127(5)); the Finance Act 1985 Pt III (ss 81-89) (as amended) (s 98(4); the Finance Act 1986 Pt III (ss 64-85) (as amended) (s 114(4)); the Finance Act 1987 Pt III (ss 48-55) (as amended) (s 72(4)); the Finance Act 1988 ss 140, 141, 143 (ss 140(5), 141(5), 143(8)); the Finance Act 1990 ss 107-109 (s 111(2)); the Stamp Duty (Temporary Provisions) Act 1992 (s 3(2)); the Finance Act 1994 Pt VI (ss 239-245) (s 257(3)); the Finance Act 1995 Pt V (ss 149-151) (s 161(3)). As to construing provisions as one see *Littlewoods Mail Order Stores Ltd v IRC* [1961] Ch 597 at 633, [1961] 3 All ER 258 at 270-271, CA, per Harman LJ (affd [1963] AC 135, [1962] 2 All ER 279, HL), and INCOME TAXATION vol 23(1) (Reissue) PARA 24.

2 See STATUTES vol 44(1) (Reissue) PARA 1369 et seq.

3 *Grenfell v IRC* (1876) 1 Ex D 242 at 248 per Pollock B; *North of Scotland Bank Ltd v IRC* 1931 SC 149 at 154 per Lord Blackburn. However, the Stamp Act 1891 often contains a definition which differs materially from the ordinary meaning of the term in question, and an instrument may therefore fall for the purposes of the Act into a class different from its ordinary legal one.

4 *Clayton v Burtenshaw* (1826) 5 B & C 41 at 47 per Littledale J; *Morley v Hall* (1834) 2 Dowl 494 at 497 per Taunton J; *Lord Foley v IRC* (1868) LR 3 Exch 263 at 268 per Kelly CB; *A-G v Carlton Bank* [1899] 2 QB 158 at 164 per Lord Russell CJ; *E C (Holdings) Ltd v IRC* [1959] TR 81. Cf *St Aubyn v A-G (No 2)* [1952] AC 15 at 32, [1951] 2 All ER 473 at 485, HL, per Lord Simonds (estate duty); and INCOME TAXATION vol 23(1) (Reissue) PARA 22.

5 *Denn d Manifold v Diamond* (1825) 4 B & C 243 at 245 per Bayley J; *R v Winstanley* (1831) 1 Cr & J 434 at 442, HL, per Lord Wynford; *Harris v Birch* (1842) 9 M & W 591 at 594 per Parke B; *Phillips v Morrison* (1844) 12 M & W 740; *Daines v Heath* (1847) 3 CB 938 at 941 per Wilde CJ; *Clifford v IRC* [1896] 2 QB 187 at 193, DC, per Pollock B; *Hennell v IRC* [1933] 1 KB 415 at 421, CA.

6 *Yelland v Winter* (1885) 50 JP 38; *Holmleigh (Holdings) Ltd v IRC* (1958) 37 ATC 406 at 408.

7 Cf *Littman v Barron* [1951] Ch 993 at 1003, [1951] 2 All ER 393 at 398, CA; affd [1953] AC 96, [1952] 2 All ER 548, HL (an income tax case).

8 *Re Royal Liver Friendly Society* (1870) LR 5 Exch 78; *A-G v Gilpin* (1871) LR 6 Exch 193. Cf *Bath Corpn v IRC* (1871) 40 LJ Ex 181; *Warrington v Furbor* (1807) 8 East 242 at 245 per Lord Ellenborough CJ.

9 See PARAS 1001 ante, 1010-1011 post.

10 *Hankins v Clutterbuck* (1848) 2 Car & Kir 810 at 813 per Rolfe B; *Emanuel v Robarts* (1868) 9 B & S 121 at 127 per Blackburn J; *IRC v G Angus & Co, IRC v Lewis* (1889) 23 QBD 579, CA; *Midland Bank Ltd v IRC* [1927] 2 KB 465 at 473 per Rowlatt J. Cf *Minister of Stamps v Townend* [1909] AC 633 at 639, PC, but see *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL.

11 *Great Northern, Piccadilly and Brompton Rly Co v A-G* [1909] AC 1, HL. However, where a private Act excluded an exemption conferred by an earlier public Act, a purchase under a subsequent Act which was to be construed as one with the earlier Act had the benefit of the original exemption: *Bath Corpn v IRC* (1871) 40 LJ Ex 181.

12 *Kimbers & Co v IRC* [1936] 1 KB 132 at 137; *Abbott v Philbin (Inspector of Taxes)* [1960] Ch 27 at 49, [1959] 3 All ER 590 at 600-601, CA (on appeal [1961] AC 352 at 373, [1960] 2 All ER 763 at 771, HL); cf INCOME TAXATION vol 23(1) (Reissue) PARA 25.

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

> 25 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a

partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

26 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

27 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals,

do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1009 Construction of stamp duty provisions**

NOTE 1--Finance Act 1958 s 35, Finance Act 1964 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(i) Nature of the Charge/1010. A charge on instruments.

# (2) THE CHARGE TO STAMP DUTY

# (i) Nature of the Charge

### 1010. A charge on instruments.

Stamp duty is chargeable on instruments[1] and not on transactions[2]. The liability of an instrument to stamp duty arises at the moment at which it is executed[3] and depends on the law in force and the circumstances which exist at that time[4]. The character of the instrument must be ascertained by reference to its legal effect when it is executed[5]. The liability of an instrument to duty is not determined as at the time when the instrument is presented for stamping[6], and still less when it is produced in evidence[7]. Until execution is completed no duty attaches[8]. Where an instrument was originally delivered as an escrow, duty is payable at the time when the conditions are fulfilled making the document effective as a deed[9]. The onus of proving that an alteration was made while the instrument was still incomplete rests on the person alleging it[10].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 See the Stamp Act 1891 s 1; and PARAS 1001 ante, 1011 post.

3 For the meaning of 'executed' see PARA 1007 note 5 ante.

4 *Wm Cory & Son Ltd v IRC*[1965] AC 1088 at 1110, [1965] 1 All ER 917 at 922, HL. See, however, the Finance Act 1965 s 90(1); and PARA 1048 post. As to the manner in which stamp duty is enforced and the territorial scope of the charge see PARAS 1007-1008 ante.

5 See PARA 1011 post.

6 See the Stamp Act 1891 s 15(1); *Lord Suffield v IRC*[1908] 1 KB 865.

7 *Clarke v Roche*(1877) 3 QBD 170.

8 *Jones v Jones* (1833) 1 Cr & M 721; *Spicer v Burgess* (1834) 1 Cr M & R 129; *Sinclair v IRC* (1942) 24 TC 432 at 444. Cf *Fitch Lovell Ltd v IRC*[1962] 3 All ER 685, [1962] 1 WLR 1325, where a composite document relating both to the transaction on the sale of certain shares and to their sub-sale required two stamps.

9 See PARA 1007 note 5 ante.

10 *London and Brighton Rly Co v Fairclough* (1841) 2 Man & G 674. As to altered instruments see PARA 1017 post.

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s

125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

28 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

29 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

30 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely

on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(i) Nature of the Charge/1011. Form and substance.

**1011. Form and substance.**

The terms of the instrument itself in general decide the question whether any, and if so what, stamp duty is chargeable[1]. The true meaning and effect of the writing, not what the instrument calls itself, decides this question[2]. Accordingly, it has been said that in determining the liability of an instrument to stamp duty, regard should be had to the substance of the transaction rather than to its form[3]. It seems, however, that the substance of a transaction is to be ascertained by reference to the true legal effect of the instrument which implements it and, where the principle in Ramsay v IRC[4] does not apply, the form or shape of the transaction which is chosen by the parties will, if it is effective at law, determine the liability of the instrument to stamp duty[5].

Where a document follows an earlier oral transaction, it is primarily a question of fact whether the document merely records that transaction or forms a part of it and gives effect to it so as to constitute a conveyance or other document subject to ad valorem duty[6]. A series of undertakings may amount to a sale agreement even though ordinary words of sale are not used[7]. Words of conveyance which are inoperative as such do not attract the duty chargeable on a conveyance[8], even though they may constitute in law an agreement, chargeable as such[9].

In doubtful cases the stamp on the instrument may be of assistance in deciding its meaning and effect[10].

1 *Limmer Asphalte Paving Co Ltd v IRC* (1872) LR 7 Exch 211 at 214. See also *West London Syndicate Ltd v IRC* [1898] 2 QB 507 at 528, CA; *Cormack's Trustees v IRC* 1924 SC 819 at 826. All facts affecting liability must appear in the instrument: see the Stamp Act 1891 s 5; and PARA 1008 ante. For the meaning of 'instrument' see PARA 1001 ante.

2 *Limmer Asphalte Paving Co Ltd v IRC* (1872) LR 7 Exch 211; *J & P Coats Ltd v IRC* [1897] 2 QB 423, CA, where an 'exchange' of shares was held to be chargeable as a conveyance on sale; *Viscount Portman v IRC* [1956] TR 353, where a 'deed of exchange' which gave effect to two mutual sales was charged to ad valorem conveyance duty on the aggregate money consideration; *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL, where a common form share transfer for nominal consideration was chargeable ad valorem as a conveyance on sale of an equitable reversion to the shares. However, the name by which the instrument is called may be a factor to be taken into consideration: *British India Steam Navigation Co v IRC* (1881) 7 QBD 165 at 172, DC (instrument a debenture, not a promissory note).

3 *Great Western Rly Co v IRC* [1894] 1 QB 507 at 513. See also *Ingram v IRC* [1986] Ch 585 at 596-597, [1986] 2 WLR 598 at 613-614.

4 Ie the principle in *WT Ramsay Ltd v IRC* [1982] AC 300, [1981] 1 All ER 865, HL, developed in *Furniss (Inspector of Taxes) v Dawson* [1984] AC 474, [1984] 1 All ER 530, HL, that preordained circular or self-cancelling transactions or steps inserted in a linear transaction solely to avoid tax are to be disregarded for fiscal purposes: see INCOME TAXATION vol 23(1) (Reissue) PARA 22. The Ramsay principle was applied to stamp duty in *Ingram v IRC* [1986] Ch 585, [1986] 2 WLR 598.

5 *Cormack's Trustees v IRC* 1924 SC 819 at 826-827; *Prudential Assurance Co Ltd v IRC* [1993] 1 WLR 211, [1992] STC 863; and see Inland Revenue Statement of Practice SP8/93, 12 July 1993 (stamp duty; new buildings; issued in the light of *Prudential Assurance Co Ltd v IRC* supra).

6 *Cohen and Moore v IRC* [1933] 2 KB 126 at 136 (where the purported appointment of new trustees of an orally constituted trust was held to be one transaction with the declaration and consequently chargeable as a settlement); *Grey v IRC* [1960] AC 1, [1959] 3 All ER 603, HL (where declarations of trust purporting to record oral declarations which were ineffective were charged ad valorem as voluntary dispositions). The fact that an oral agreement may be validated by the Law of Property Act 1925 s 53(2), which excludes resulting, implied or constructive trusts from s 53(1) (see TRUSTS vol 48 (2007 Reissue) PARA 644), does not, it seems, prevent a

subsequent written transfer of the property subject to the agreement from being subject to ad valorem duty: *Oughtred v IRC* [1960] AC 206 at 239-240, [1959] 3 All ER 623 at 633, HL, per Lord Jenkins.

7 *Eastern National Omnibus Co Ltd v IRC* [1939] 1 KB 161, [1938] 3 All ER 526, where the sale of buses with an undertaking to assist the purchaser to obtain traffic licences in order to continue to run the buses, with a covenant not to compete, was chargeable ad valorem as an agreement to sell goodwill or a conveyance of it.

8 *Limmer Asphalte Paving Co Ltd v IRC* (1872) LR 7 Exch 211 ('grant' of rights which the grantor did not have).

9 *R v Ridgwell Inhabitants* (1827) 6 B & C 665, where a 'conveyance', which was inoperative for want of a seal, was sufficiently stamped with duty as an agreement.

10 *Hutley v Marshall* (1882) 46 LT 186, CA; *Siqueira v Noronha* [1934] AC 332 at 339, PC; *Re McArdle* [1951] Ch 669, [1951] 1 All ER 905, CA.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

31 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

32 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the

relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

33 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1011 Form and substance**

NOTE 5--Inland Revenue Statement of Practice SP8/93 continues to apply for stamp duty land tax purposes: Inland Revenue press release 5 April 2004.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(i) Nature of the Charge/1012. Extrinsic evidence.

**1012. Extrinsic evidence.**

Extrinsic evidence may be adduced to show the meaning or effect of the terms of an instrument[1], or that the stamp is insufficient[2]. It is not necessary that the consideration by reference to which ad valorem duty is chargeable on an instrument should be stated in the instrument itself, provided that it is ascertainable at the time the instrument is executed[3]. Although the liability of an instrument to stamp duty depends upon the circumstances which exist when the instrument is executed, the court can have regard to what is said and done thereafter in order to discover the true position at that time[4].

1 *Horsfall v Hey* (1848) 2 Exch 778; *Garnett v IRC* (1899) 81 LT 633, DC, where the use of the past tense was not sufficient to make an instrument a mere memorandum recording a conveyance (criticised in *Fleetwood-Hesketh v IRC* [1936] 1 KB 351, CA; see also *Don Francesco v De Meo* 1908 SC 7, where an 'agreement for sale' was shown to be a mere memorandum of a past transaction); *Midland Bank Ltd v IRC* [1927] 2 KB 465, where a 'receipt' not given on the payment of money but intended for use as a cheque was chargeable as a cheque; *Cohen and Moore v IRC* [1933] 2 KB 126; *Fleetwood-Hesketh v IRC* supra, where a 'receipt' was held to be a memorandum of an agreement for sale, and was chargeable ad valorem; *Viscount Portman v IRC* [1956] TR 353; *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL, where an intention to effect the sale of an equitable reversion by means of a share transfer was deduced from other transactions.

2 *Clarke v Roche* (1877) 3 QBD 170 (instrument executed before, but dated after, reduction in stamp duty); *Maynard v Consolidated Kent Collieries Corpn Ltd* [1903] 2 KB 121, CA (consideration not truly stated; followed in *Conybear v British Briquettes Ltd* [1937] 4 All ER 191).

3 See eg *Parry v Deere* (1836) 5 Ad & El 551; *Furness Rly Co v IRC* (1864) 10 Jur NS 1133; *Underground Electric Rlys Co of London Ltd v IRC* [1906] AC 21, HL; and the observations of Scrutton J in *Underground Electric Rlys Co of London Ltd and Glyn Mills, Currie & Co v IRC* [1914] 3 KB 210 at 220; affd [1916] 1 KB 306, CA; and PARA 1034 post. As to the calculation of duty where the consideration for a conveyance on sale consists of periodical payments see PARA 1035 post; and as to the stamp duty chargeable by reference to market value or market rent where the consideration for land or the rent for a lease is unascertainable when the instrument is executed see PARAS 1047, 1059 post.

4 See *Wm Cory & Son Ltd v IRC* [1965] AC 1088, [1965] 1 All ER 917, HL; and PARA 1010 ante. See, however, the Finance Act 1965 s 90(1); and PARA 1048 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

34 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

35 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

36 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(i) Nature of the Charge/1013. Instrument falling under more than one head of charge.

**1013. Instrument falling under more than one head of charge.**

Where an instrument, regarded as a whole, falls within more than one head of charge, the Crown is entitled to the higher duty[1]. An instrument which according to its primary object is liable to charge is not brought within a general exemption by the fact that it may have a subsidiary operation within the terms of the exemption[2].

1 *Brown, Shipley & Co v IRC* [1895] 2 QB 598, CA (marketable security as well as promissory note); *Chesterfield Brewery Co v IRC* [1899] 2 QB 7, DC (conveyance as well as declaration of trust) (approving dictum of Channell J in *West London Syndicate Ltd v IRC* [1898] 1 QB 226 at 240, DC); *Speyer Bros v IRC* [1908] AC 92, HL.

2 *Deddington SS Co Ltd v IRC* [1911] 2 KB 1001, CA. As to exemptions from stamp duty see PARA 1082 et seq post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

37 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

38 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or

marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

39 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(i) Nature of the Charge/1014. Several instruments in one document.

**1014. Several instruments in one document.**

If more than one instrument[1] is written on the same piece of material[2], each instrument must be separately and distinctly stamped[3] with the stamp duty with which it is chargeable[4]. Difficulties arise where instruments are written upon or amended[5] after execution and stamping. A memorandum indorsed on a life policy increasing the sum assured was held to be a separate policy chargeable as such prior to the abolition of this head of charge[6], but a memorandum extending the period of insurance for an additional period was admitted without stamp[7]. If the memorandum merely corrects an error not itself affecting stamp duty[8] or otherwise explains what the parties mean, or is merely ancillary[9], it does not require a separate stamp.

1 For the meaning of 'instrument' see PARA 1001 ante.

2 'Material' includes every sort of material upon which words or figures can be expressed: Stamp Act 1891 s 122(1).

3 For the meaning of 'stamped' see PARA 1007 note 9 ante.

4 Stamp Act 1891 s 3(2).

5 As to alterations of existing instruments see PARA 1017 post.

6 *Prudential Assurance Co Ltd v IRC* [1935] 1 KB 101. The following documents relating to matters formerly chargeable to duty were similarly treated: an indorsed agreement to postpone completion for a few days (*Bacon v Simpson* (1837) 3 M & W 78); a guarantee by a third person written on an agreement (*Wharton v Walton* (1845) 7 QB 474); an agreement indorsed on a deed securing an annuity that it should be redeemable at six months' notice (*Schumann v Weatherhead* (1801) 1 East 537); an agreement indorsed on an arbitration bond, varying it (*Stephens v Lowe* (1832) 9 Bing 32); a memorandum on a sea policy altering 'ship and outfit' to 'ship and goods' (*Hill v Patten* (1807) 8 East 373).

7 *Royal Exchange Assurance v Hope* [1928] Ch 179.

8 *Robinson v Touray* (1813) 1 M & S 217 (memorandum on sea policy (then liable to duty) substituting correct name of ship).

9 *Doe d Downe v Govier* (1845) 5 LTOS 37. As to one stamp covering ancillary matters see PARA 1015 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject

matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

40 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

41 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

42 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(i) Nature of the Charge/1015. Instrument relating to several matters.

**1015. Instrument relating to several matters.**

Except where there is statutory provision to the contrary[1], an instrument[2] containing or relating to several distinct matters is to be separately charged, as if it were a separate instrument, with stamp duty in respect of each of the matters[3], and an instrument made for any consideration in respect of which it is chargeable with ad valorem duty, and also for any further or other valuable consideration or considerations, is separately chargeable, as if it were a separate instrument, in respect of each of the considerations[4].

It seems that 'distinct matters' means for this purpose matters which either fall under separate heads of charge or are separate transactions. Thus a statutory declaration, sworn as to one part by one person and as to another part by another, attracted only one stamp as one declaration prior to the abolition of duty under this head[5]. On the other hand, a single conveyance of separate items of property, of which some attract conveyance duty and some do not, relates to distinct matters[6]. Again, if two persons in fact sell property to each other, a mutual conveyance described as an exchange attracts the same aggregate duty as two separate conveyances on sale[7]. However, there is authority for the principle that an instrument stamped for its leading and principal object covers everything accessory to that object[8].

The line between one matter and several is not easy to draw[9]. It has, however, been regarded as well established that, where a provision in an instrument is such that, even if it had not been expressed, it would have been implied by law, such a provision is not a distinct matter and no duty is chargeable in respect of it[10]. The fact that several persons join in an instrument does not by itself make their shares in the transaction separate and distinct matters, provided that there is a community of the same subject matter, either as to property or interest[11], in all the parties, although, in the absence of the necessary community of interest, more than one stamp may be required[12]. Various instruments which, in respect of their leading characteristic, were either not liable to duty, or if liable were properly stamped, have been held not to be chargeable with any further duty by reason of the inclusion of provisions considered to be merely ancillary to the leading object[13]; whereas stamp duty has been attracted where a provision has been held not to be merely ancillary to another main provision but separate and distinct[14].

1 Ie express provision made by the Stamp Act 1891 or any other Act: s 4. Statutory provision to the contrary is contained in s 77(1), (2) (leases reserving penal rents or made for certain consideration: see PARAS 1056, 1060 post); and the Finance Act 1900 s 10 (conveyances in further consideration of improvements by the purchaser: see PARA 1034 post).

2 For the meaning of 'instrument' see PARA 1001 ante.

3 Stamp Act 1891 s 4(a).

4 Ibid s 4(b).

5 *Reversionary Interest Society Ltd v IRC* (1906) 22 TLR 740. Where an agreement for the sale of goods had been executed by several vendors of separate goods so as to require several stamps, and the names of some had been crossed out, it was presumed that the stamps related to the execution by those whose names had not been crossed out: *Waddington v Francis* (1804) 5 Esp 182.

6 *Ansell v IRC* [1929] 1 KB 608 at 617 per Rowlatt J: see note 14 infra.

7 *Viscount Portman v IRC* [1956] TR 353, distinguished in *Littlewoods Mail Order Stores Ltd v IRC* [1961] Ch 210, [1961] 1 All ER 195 (affd [1961] Ch 597, [1961] 3 All ER 258, CA; [1963] AC 135, [1962] 2 All ER 279, HL).

As to the circumstances in which an exchange of property may be liable as a conveyance on sale see PARA 1043 et seq post.

8 *Limmer Asphalte Paving Co Ltd v IRC* (1872) LR 7 Exch 211 at 217; *Lord Suffield v IRC* [1908] 1 KB 865: see note 13 infra.

9 Many of the cases cited in notes 10-13 infra were decisions on repealed enactments in litigation between subjects and cannot be regarded as possessing the same authority as revenue cases decided on the enactments now in force.

10 *Mullett v Hutchison* (1828) 7 B & C 639 (memorandum of deposit containing an agreement to return the deposited bills) (distinguished in *Doe d Frankis v Frankis* (1840) 11 Ad & El 792); *Barry v Goodman* (1837) 2 M & W 768 (admission by occupier that he remained on sufferance only, containing also an agreement to give up possession on demand); *Doe d Scruton v Snaith* (1832) 8 Bing 146 (mortgage containing provision securing expenses which might be incurred by the mortgagee in exercise of his power of sale); *Doe d Merceron v Bragg* (1838) 8 Ad & El 620 (mortgage containing covenant by mortgagor to pay rates and taxes); *Wroughton v Turtle* (1843) 11 M & W 561 (mortgage of leaseholds containing provision making any fines paid by the mortgagee upon renewal a charge on the property); *Hill v Ramm* (1843) 5 Man & G 789 (admission of a debt in consideration of withdrawal of distress containing an agreement that in default of payment distress might be levied again); *Notley v Webb* (1848) 5 CB 834 (agreement by party accommodated to find money to meet an accommodation bill when due); *Lawrance v Boston* (1851) 7 Exch 28 (mortgage of assurance policy containing a provision that expenses incurred by the mortgagee in obtaining a fresh policy, if necessary, should be a charge on the new policy). *Annandale v Pattison* (1829) 9 B & C 919 (joint and several bond, executed by principal and surety containing a covenant by the principal to indemnify the surety) is a case coming under this rule rather than that exemplified by the cases cited in the first paragraph in note 13 infra. Where, however, in a sale agreement, the vendor expressly declares himself a trustee for the purchaser, this may render the agreement liable to duty as a conveyance on sale of an equitable interest: see *Chesterfield Brewery Co v IRC* [1899] 2 QB 7 at 12-13, DC, per Wills J; and PARA 1040 post.

11 *Baker v Jardine* (1784) 13 East 235n (bill of sale by the crew of a privateer of their shares in prize money); *Bowen v Ashley* (1805) 1 Bos & PNR 274 (bond by performers in which none would have joined unless all had joined); *Davis v Williams* (1811) 13 East 232 (agreement to contribute to the cost of making a dock); *Cook v Jones* (1812) 15 East 237 (grant of an annuity by several persons); *Goodson v Forbes* (1815) 6 Taunt 171 (agreement by several underwriters to refer a dispute on a policy); *Allen v Morrison* (1828) 8 B & C 565 (letter of attorney signed by members of a mutual insurance club); *R v Louth Inhabitants* (1828) 8 B & C 247 (indenture to serve one man for four years and then another for three years); *Ramsbottom v Davis* (1839) 4 M & W 584 (agreement by three persons to indemnify a fourth to the extent of £50 each, to be paid severally); *Cooper v Flynn* (1841) 3 ILR 472 (lease to joint tenants); *Thomas v Bird* (1841) 9 M & W 68 (release to an administrator by two next of kin; see, however, *Freeman v IRC* (1871) LR 6 Exch 101); *Wills v Bridge* (1849) 4 Exch 193 (conveyance by three persons of a block of shares in which their interests were several); *Doe d Croft v Tidbury* (1854) 14 C B 304 (conveyance by several encroachers upon a common in which each purported to convey the whole encroachment, although in fact their interests were several). So an admission of joint tenants of copyhold tenements was held under Acts now repealed to require only one stamp in respect of each tenement (*Traherne v Gardner* (1856) 5 E & B 913), although a contract of demise to different tenants with a several operation required separate stamps (*Doe d Copley v Day* (1811) 13 East 241). Many of the cases cited in this note were decisions on heads of charge to stamp duty now repealed, so they are of illustrative value only. See also note 9 supra.

12 See *Freeman v IRC* (1871) LR 6 Exch 101, where a deed by which shares in a number of companies held by two executors were divided between them and two other residuary legatees was held to operate as a separate transfer as regards each of the four parties, but not as regards several blocks of shares transferred to one party so that four stamps and no more were required; *R v Eton College* (1846) 8 QB 526 (deed containing admittances on the sale of a copyhold tenement by five tenants in common). The old cases in which it was held that if an affidavit was entitled in more than one cause as many stamps were required as there were causes (*Anon* (1811) 3 Taunt 469; *R v Carlisle* (1819) 1 Chit 451) may still be referred to as illustrating the principle. As to purchases of separate lots at an auction see AUCTION vol 2(3) (Reissue) PARA 237. For the rule that such purchases do not form part of a series of transactions for stamp duty purposes see PARA 1028 note 9 post.

13 *Stead v Liddard* (1823) 1 Bing 196 (agreement containing a guarantee by a third person to secure performance); *Pratt v Thomas* (1831) 4 C & P 554 (subsequent proceedings sub nom *Price v Thomas* (1831) 2 B & Ad 218) (lease containing a covenant for rent in which a third person joined; contrast *Wharton v Walton* (1845) 7 QB 474; and see PARA 1055 post); *Meering v Duke* (1828) 2 Man & Ry KB 121 (agreement for sale of a ship including various provisions for receiving payment of the price); *Worthington v Warrington* (1848) 5 CB 635 (agreement for a lease containing an option to purchase at the end of the term); *Walker v Giles* (1848) 6 CB 662, and *Barnard v Pilsworth* (1849) 6 CB 698n (mortgage containing an attornment by the mortgagor to the mortgagee); *Limmer Asphalte Paving Co Ltd v IRC* (1872) LR 7 Exch 211 at 217 (provision for payment of part of the consideration by instalments); *Kirkwood v Carroll* [1903] 1 KB 531, CA, following *Yates v Evans* (1892) 61 LJQB 446, DC, and overruling *Kirkwood v Smith* [1896] 1 QB 582, DC (promissory note containing provision that

no time given by the creditor to the principal debtor should affect his right against the surety); *General Accident Assurance Corpn Ltd v IRC* 1906 8 F (Ct of Sess) 477 (policy of assurance against accident containing a provision as to return of part of the premiums upon death in certain events); *Lord Suffield v IRC* [1908] 1 KB 865 (mortgage containing provisions making expenses reasonably incurred in preserving the security a charge upon the property mortgaged); and see *Oughtred v IRC* [1958] Ch 678 at 687, 690, [1958] 2 All ER 443 at 446, 448, CA (on appeal [1960] AC 206 at 234, [1959] 3 All ER 623 at 629-630, HL) (share transfer chargeable ad valorem as transfer on sale of an equitable interest; transfer not also chargeable with fixed duty as a transfer of the legal title).

The following cases in which provisions were held to be 'incident to the sale or conveyance of property' within the meaning of the Stamp Act 1815 Schedule Pt I, 'Conveyance' (repealed), may be referred to as illustrating provisions which are not separate and distinct: *Wolseley v Cox* (1841) 2 QB 321 (covenant in a transfer of shares by the transferee to observe the rules of the company); *Doe d Phillipps v Phillipps* (1840) 11 Ad & El 796 (stipulation in a surrender for the grant of a new lease).

On the other hand, in *Brightman v IRC* (1868) 18 LT 412, an instrument by which land was sold to a trustee for the purchaser for three months, and the reversion conveyed to the purchaser, was held chargeable both as a lease and as a conveyance. See also notes 9, 11 supra.

14 *Lovelock v Franklyn* (1846) 8 QB 371 (covenant in a lease of one messuage to assign that and four other messuages); *Hadgett v IRC* (1877) 3 Ex D 46, DC (appointment of new trustees and conveyance of property to them); *Lord Suffield v IRC* [1908] 1 KB 865 (provision in a conveyance that grantees should hold the property conveyed as security for a debt upon the terms of another indenture of mortgage). See also *Ansell v IRC* [1929] 1 KB 608 (settlement of government stocks and other property attracted settlement duty and voluntary disposition duty on the two kinds of property respectively). In *Lewis v IRC* [1898] 2 QB 290, DC, it was admitted that two stamps were required for a separation deed which contained a provision securing an annuity, and a decision to that effect was also given in the county court: see *Hulse v Hulse* (1910) 54 Sol Jo 704. A composite document relating both to the transfer of certain shares and to their sub-sale required two stamps: *Fitch Lovell Ltd v IRC* [1962] 3 All ER 685, [1962] 1 WLR 1325. See also notes 9, 11 supra.

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

43 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

44 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

45 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1016. Several instruments; one stamp.**

Where reference to several documents is necessary to prove what is in fact a single transaction, so that in a sense they constitute only one instrument, it is sufficient if one of the documents is properly stamped[1]. A properly stamped instrument is not rendered inadmissible by containing a reference to another instrument which is not properly stamped, but the other instrument is not thereby itself made admissible[2].

1 *Peate v Dicken* (1834) 1 Cr M & R 422; *Pearce v Cheslyn* (1835) 4 Ad & El 225; *Grant v Maddox* (1846) 15 M & W 737; *Re Albert Average Association, Blyth & Co's Case* (1872) LR 13 Eq 529. For the meaning of 'instrument' see PARA 1001 ante.

2 *Duck v Braddyll* (1824) M'Cle 217. The case where two or more instruments are used to carry out what may be, nevertheless, a single transaction must be distinguished: see eg the Stamp Act 1891 s 58(3); and PARA 1038 post. See also *A-G v Ross* [1909] 2 IR 246 (Ir CA) (counterpart or duplicate).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

46 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

47 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in

a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

48 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(i) Nature of the Charge/1017. Altered instruments.

**1017. Altered instruments.**

In general, any material alteration in an instrument after it is complete renders a new stamp necessary, as the effect is to make it in substance a new instrument[1], with the result that the new instrument cannot be proved for want of a stamp, and the old instrument cannot be sued upon as it has been superseded[2].

Where an instrument is still incomplete, an alteration may be made without rendering a new stamp necessary[3], but an instrument is not necessarily incomplete because execution by another party is still required[4]. No further stamp is required if the alteration is immaterial[5] or merely declaratory[6], or is made to render certain a point left open[7], or to correct a mistake[8] or was inserted by a stranger[9].

Where a deed has been altered, the general presumption is that the alteration was made before execution[10].

1 *London and Brighton Rly Co v Fairclough* (1841) 2 Man & G 674 (substitution of purchaser's name in share transfer). See also *Schumann v Weatherhead* (1801) 1 East 537. For the meaning of 'instrument' see PARA 1001 ante.

2 *Hill v Patten* (1807) 8 East 373; *French v Patton* (1808) 9 East 351; *Reed v Deere* (1827) 7 B & C 261; *Royal Exchange Assurance v Hope* [1928] Ch 179, CA. See, however, *Robson v Hall* (1792) Peake 127.

3 *Hall v Chandless* (1827) 4 Bing 123; *Jones v Jones* (1833) 1 Cr & M 721 (alteration of instrument after execution by some parties, but before execution by others, and with the consent of all).

4 *London and Brighton Rly Co v Fairclough* (1841) 2 Man & G 674. However, if a deed expressly provided that each executing party would be bound, whether or not the other parties executed it, one stamp would be sufficient even though the various parties executed at intervals.

5 *Hartley v Manson* (1842) 4 Man & G 172 (addition of descriptive words after party's name).

6 *Doe d Waters v Houghton* (1827) 1 Man & Ry KB 208.

7 *Taylor v Parry* (1840) 1 Man & G 604; *Barker v Aston* (1858) 1 F & F 192; *Sadgrove v Bryden* [1907] 1 Ch 318.

8 *Cole v Parkin* (1810) 12 East 471.

9 *Henfree v Bromley* (1805) 6 East 309.

10 See DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 81.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A.

However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

49 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

50 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

51 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net

market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(ii) Amount of the Charge/1018. Charges and rates.

## (ii) Amount of the Charge

### 1018. Charges and rates.

The most common ad valorem stamp duties are:

28 (1) the duty of £1 per £100 or part of £100 of the amount or value of the consideration on conveyances or transfers on sale of property other than stock or marketable securities, to which a threshold of £60,000 applies[1] provided that the instrument is certified in a particular manner[2];

29 (2) the duty at the same rate on leases in respect of the premium, where the threshold for duty is restricted[3];

30 (3) the duty of 50 pence per £100 or part of £100 on transfers on sale of stock or marketable securities, to which the threshold for duty does not apply[4]; and

31 (4) the duty chargeable on leases calculated on a progressive scale according to the rent and the term of the lease[5].

A higher rate charge of £1.50 per £100 or part of £100 of the amount or value of the consideration or the value of the securities applies to bearer instruments, transfers of securities to persons who issue depositary receipts and transfers of securities to persons who provide clearance services[6].

The most common fixed duty is that of 50 pence chargeable on conveyances, declarations of trust, partitions or divisions of real property, releases, renunciations and surrenders which are not chargeable as conveyances on sale[7]. Fixed duty of up to 50 pence is also chargeable on duplicates and counterparts of instruments where the original is chargeable with duty[8].

Stamp duty is also chargeable at fixed rates of 10 pence[9], £1[10] and £2[11] and at ad valorem rates of 10 pence[12] and 50 pence[13] per £50 or part of £50 of the amount or value of the consideration or the value of the property to which the instrument relates.

There are various exemptions and reliefs which may apply to one or more of these charges[14].

Special provision was made with regard to instruments not stamped, overstamped or insufficiently stamped immediately before the introduction of decimal currency[15].

1 See para 1027 post. Specific provisions impose this charge on other instruments: see paras 1040-1042 post (certain agreements chargeable as a conveyance on sale); paras 1043-1045 post (certain exchanges chargeable as a conveyance on sale); para 1046 post (conveyance in satisfaction of a debt or subject to a liability); paras 1048-1049 post (conveyance in contemplation of sale); and para 1050 post (property vested on sale or purchased under statute). The application of the charge is modified in relation to public housing right to buy schemes: see paras 1051-1053 post.

2 See para 1028 post.

3 See paras 1054, 1062-1063 post. An agreement for a lease is chargeable as a lease: see para 1057 post.

4 See para 1029 post. The transfer or deemed transfer of a unit in a unit trust scheme is chargeable at the same rate: see paras 1074-1076 post. As to the prospective abolition of this charge see paras 1004-1005 ante.

5 See paras 1054, 1058-1061 post. For the ad valorem duty imposed on instruments increasing the rent reserved by an instrument other than a duly stamped lease see para 1061 post.

6 See PARAS 1065-1073 post. The rate is £1 per £100 or part of £100 if the transfer is by a qualified dealer who is not a market maker in securities of the kind concerned for the purposes of his business: see PARA 1070 post. As to the prospective abolition of this charge see PARAS 1004-1005 ante.

7 See PARAS 1077-1078, 1080-1081 post. A fixed duty of 50p is also charged on any instrument which was specifically charged with a fixed duty amounting to £1.75 by any Act not relating to stamp duties passed before 1 January 1871: see the Stamp Act 1891 s 120.

8 See PARA 1079 post.

9 Fixed duty of 10p is imposed on bearer instruments given in substitution for a like instrument which is duly stamped: see PARAS 1067-1068 post.

10 Fixed duty of £1 is imposed on a lease for any definite term less than a year of any furnished dwelling where the rent for such term exceeds £500: see PARA 1096 post.

11 Fixed duty of £2 is imposed on a lease not otherwise charged: see PARA 1054 post.

12 Ad valorem duty of 10p per £50 or part of £50 of the market value of securities is imposed on instruments excepted from the charge on bearer instruments: see PARAS 1066-1067 post.

13 Ad valorem duty of 50p per £50 or part of £50 of the amount or value of the consideration is imposed on a conveyance or transfer on sale of property, other than stock, marketable securities or units in a unit trust, for which the consideration does not exceed £500 (unless certified for the purposes of the stamp duty threshold for conveyances on sale): see PARAS 1027-1028 post.

14 See PARA 1082 et seq post.

15 See the Finance Act 1970 s 32(c), Sch 8 para 19.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

> 52 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual

consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

53 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

54 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1018 Charges and rates**

TEXT AND NOTES--For the application of the stamp duty and stamp duty reserve tax (see PARA 1118 et seq) charges in the case of an open-ended investment company (within the meaning of Financial Services Act 1986 s 75(8) and resident in the United Kingdom), see the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997, SI 1997/1156 (amended by SI 1999/1467, SI 1999/3261, SI 2001/964, SI 2001/3629, SI 2006/746).

The amount of any stamp duty chargeable ad valorem is a percentage of the amount specified in the relevant charging provision, and is rounded up (if necessary) to the nearest £5: Finance Act 1999 s 112(1). The amount of every fixed stamp duty is raised to £5: s 112(2).

These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122.

Where any payment to the Commissioners of Inland Revenue is made by cheque which is paid on its first presentation to the banker on whom it is drawn, the payment is treated as made on the day on which the cheque was first received by the commissioners: Sch 18 para 2.

As to the Treasury's power to vary stamp duties see the Finance Act 2000 s 117, Sch 33; and PARA 1018A.

NOTE 7--Stamp Act 1891 s 120 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(ii) Amount of the Charge/1018A. Power to vary stamp duties.

**1018A. Power to vary stamp duties.**

The Treasury may, if it considers it expedient in the public interest, make provision by regulations for the variation of an existing stamp duty[1]. This power includes, in particular, power to alter the descriptions of document in respect of which an existing stamp duty, or an existing rate or amount of duty, is chargeable, but not otherwise to vary (1) the rate, or rates, of an existing ad valorem stamp duty, (2) the amount of an existing fixed stamp duty, or (3) any specified threshold[2]. It does not include power to vary the amount chargeable by way of stamp duty on an excepted instrument or to cause stamp duty to become chargeable on such an instrument[3].

1 Finance Act 2000 s 117, Sch 33 para 1(1). Regulations must be made by statutory instrument which must be laid before the House of Commons: Sch 33 paras 1(3), 4(1). If they are not approved by the House before the end of the period of 28 days beginning with the day on which they are made, they cease to have effect (but without prejudice to anything done in reliance on them) at the end of that period (or, if earlier, on their rejection by the House): Sch 33 para 4(2)-(4). The 28-day period takes no account of any time during which Parliament is prorogued or dissolved, or the House of Commons is adjourned for more than four days: Sch 33 para 4(4). Where regulations cease to have effect under these provisions, any amount paid by way of stamp duty, or interest or penalty on late stamping, that would not have been payable but for the regulations, must be repaid by the Commissioners on a claim made within two years after the date of the instrument in question or, if it is not dated, within two years after its execution: Sch 33 para 5(1). Any such repayment must (subject to regulations) be made to such person as the Commissioners consider appropriate, and interest is payable in accordance with the Finance Act 1999 s 110 (see PARA 1020A), the relevant time being 30 days after the day on which the instrument in question was executed or, if later, the date on which the payment of duty or penalty was made: Finance Act 2000 Sch 33 para 5(2), (3), (5). No repayment may be made on a claim until the instrument in question has been produced to the Commissioners for such cancelling of stamps, and such stamping to denote the making of the repayment or the producing of the instrument, as the Commissioners consider appropriate; and the Commissioners may make provision by regulations (made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons) for (1) varying the time limit for claims, (2) varying or repealing the production requirements, (3) as to any other conditions to be met before repayment is made, and (4) as to the person to whom repayment is to be made: Sch 33 para 5(4), (6), (7).

Where regulations under Sch 33 para 1 cease to have effect, then, in relation to an instrument that was executed at a time when they were in force and was then chargeable with any amount of stamp duty with which it would not otherwise have been chargeable (a) no repayment under these provisions prevents it being treated for any purpose as duly stamped in accordance with the law in force at the time when it was executed; and (b) if it was not stamped when the regulations were in force, the law in force at the time when it was executed is deemed to be what it would have been in the absence of the regulations: Sch 33 para 6.

Without prejudice to the further exercise of the regulatory power, regulations made under Sch 33 para 1 do not apply to instruments executed after the end of the period of 18 months beginning with the day on which the regulations were made or such shorter period as may be specified in them: Sch 33 para 7.

In relation to a bearer instrument (see PARA 1066), references to execution are to be read as references to issue: Sch 33 para 9.

2 Ibid Sch 33 paras 1(2), 3. The thresholds are those specified in the Finance Act 1999 Sch 13 paras 4 (see PARA 1027), 11, 12 (see PARA 1058): Finance Act 2000 Sch 33 para 3(c), (d). Any power to make regulations under Sch 33 para 1 (or Sch 33 para 5: see NOTE 1) includes power to make such transitional, supplementary and incidental provisions as appears to the authority making the regulations to be necessary or expedient: Sch 33 para 8.

3 Ibid Sch 33 para 2(1). An 'excepted instrument' is any document that is not a relevant property instrument; and a 'relevant property instrument' is a document that (whether or not it also relates to any other transaction) relates to a transaction that to any extent involves (1) land, stock or marketable securities, or (2) any estate or interest in land, stock or marketable securities: Sch 33 para 2(2).

In pursuance of the above powers, the Treasury has made the Variation of Stamp Duties Regulations 2001, SI 2001/3746, restricting the application of the Finance Act 2001 s 92(1), Sch 30 para 1 (see PARA 1027).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

55 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

56 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in

the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

57 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(ii) Amount of the Charge/1019. Contingent payments.

**1019. Contingent payments.**

Ad valorem stamp duty may be chargeable on a sum payable under or secured by an instrument[1], even though the liability to pay rests on a contingency which may never materialise, and even though the amount agreed upon by the parties[2] at the time the instrument is executed[3] may vary upwards or downwards according to specified contingencies[4].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 As to the admissibility of extrinsic evidence for stamp duty purposes see PARA 1012 ante.

3 For the meaning of 'executed' see PARA 1007 note 5 ante.

4 *Underground Electric Rlys Co of London Ltd and Glyn, Mills, Currie & Co v IRC* [1914] 3 KB 210 (affd [1916] 1 KB 306, CA) (deed guaranteeing payment of interest on stock); *Independent Television Authority and Associated Rediffusion Ltd v IRC* [1961] AC 427, [1960] 2 All ER 481, HL. Both these cases concerned the duty under the Stamp Act 1891 s 1, Sch 1, 'Bond, Covenant or Instrument of any kind whatsoever' (as amended), now no longer chargeable in such cases. As to the application of the principle under Sch 1, 'Conveyance or transfer on sale' (as amended), see s 57 (where provision is made for the charging of contingent payments as the whole or part, as the case may be, of the consideration); and PARA 1046 post; *Coventry City Council v IRC* [1979] Ch 142, [1978] 1 All ER 1107; and *Underground Electric Rlys Co of London Ltd v IRC* [1906] AC 21, HL (payment by purchaser of profits over 5% in payment to vendors of a sum equal to 3% on their share capital). As to the application of the principle under the 'Lease' head of charge see *Cummins Engine Co Ltd v IRC* [1981] STC 604; and PARA 1054 et seq post. See also *Maxwell v IRC* (1866) 4 Macph 1121 (obligation to pay sum of money varying according to number of children); *Onslow v IRC* [1891] 1 QB 239, CA (settlement of stock expectant on a reversion liable to diminution in case of birth of children); *City of London Brewery Co Ltd v IRC* [1899] 1 QB 121, CA (trust deed securing payment of debenture stock if issued); *International Power and Paper Co of Newfoundland Ltd v IRC* (1933) 12 ATC 413 (deed securing debenture stock; extreme improbability of further borrowing under deed immaterial).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

58 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

59 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

60 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1019 Contingent payments**

TEXT AND NOTES--Provided an amount of consideration can be ascertained in the circumstances existing at the date of the instrument, stamp duty is chargeable on that consideration: *LM Tenancies 1 plc v IRC* [1998] 1 WLR 1269, CA, applying *Underground Electric Railways Co of London Ltd v IRC*, cited.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(iii) Penalties for Late Stamping/1020. Time for stamping instruments executed in the United Kingdom.

## (iii) Penalties for Late Stamping

### 1020. Time for stamping instruments executed in the United Kingdom.

The requirement to stamp an instrument[1] was once satisfied by the use of adhesive stamps or pre-stamped paper at the time or before the instrument was executed and certain provisions of the Stamp Act 1891 reflect the old practice[2]. Although specific provision for stamping instruments within a limited period after execution without penalty is only made in relation to instruments chargeable with ad valorem duty[3], the modern practice is to allow any chargeable instrument executed[4] in the United Kingdom[5] to be stamped[6] without penalty within 30 days after the first execution or 14 days after notice of assessment by the Commissioners of Inland Revenue where their opinion has been required as to the amount of stamp duty chargeable[7]. If an instrument chargeable with fixed duty has not been sufficiently stamped within the proper period, a penalty of £10 is payable, together with the unpaid duty, and also a further penalty, where the unpaid duty exceeds £10, of interest on such duty[8]. If an instrument chargeable with ad valorem duty[9] has not been sufficiently stamped within the proper period, the person responsible incurs a fine of £10[10], and a further penalty equivalent to the stamp duty is payable, in addition to the unpaid duty and the penalty payable in respect of instruments chargeable to fixed duty[11], unless a reasonable excuse for the delay in stamping, the omission to stamp, or the insufficiency of stamp, is afforded to the satisfaction of the commissioners or of the court, judge, arbitrator or referee before whom the instrument is produced[12].

Any unstamped or insufficiently stamped instrument may be stamped after execution upon payment of the unpaid duty and any penalty[13]. The commissioners have power to mitigate or remit any penalty payable on stamping[14]. Any penalty paid is to be denoted on the instrument[15].

If an agreement for a lease is presented for stamping at the same time as the lease or tack which gives effect to the agreement[16], and the duty (if any) chargeable on the agreement is paid, the agreement is treated for the purposes of the penalty provisions as if it had been executed when the lease was executed[17]. No lease is, however, to be treated as duly stamped unless it contains a certificate that there is no agreement to which it gives effect, or it is stamped with a stamp denoting (1) that there is an agreement to which it gives effect which is not chargeable with duty; or (2) the duty paid on the agreement to which it gives effect[18].

Where an agreement for the sale of property is chargeable with ad valorem duty as a conveyance on sale[19], but is not stamped, it will be deemed to be duly stamped if duty is paid on a conveyance or transfer which implements the sale within six months of the agreement[20].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 See eg the Stamp Act 1891 s 3, s 9 (as amended); s 15(1), (2)(a); the text and notes 3-8 infra; and PARAS 1014 ante, 1023 post.

3 The instruments to which this provision applies (and the persons liable to a penalty on failure to stamp) are: instruments chargeable with ad valorem stamp duty and described in the Stamp Act 1891 s 1, Sch 1 (as amended) as (1) 'Bond, Covenant or Instrument of any kind whatsoever' (obligee, covenantee or other person taking the security being liable); (2) 'Conveyance or Transfer on Sale' (vendee or transferee being liable); (3) 'Lease or Tack' (lessee being liable); and (4) 'Agreement for lease or tack chargeable under s 75' (as amended) (see PARA 1057 post) (person contracting for the lease to be granted to him or another being liable): s 15(2)(d), Table (amended by the Finance Act 1971 s 69, Sch 14 Pt VI; the Finance Act 1984 s 111(4); and by virtue of the Finance Act 1988 ss 140, 148, Sch 14 Pt XI). An agreement for a lease executed on or after 6 May 1994 may be

presented with the lease which gives effect to the agreement without penalty: see the text and notes 16-18 infra. The Stamp Act 1891 s 15(2) (as amended) also applies to certain transfers falling under Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described' (as amended) (see PARA 1077 post) which are chargeable with ad valorem duty under the provisions relating to depositary receipts or clearance services: see the Finance Act 1986 ss 69(5), 72(3); and PARAS 1070, 1073 post. The Stamp Act 1891 Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' (as amended) is now limited to instruments increasing the rent reserved by a lease which is not duly stamped: see PARA 1061 post. See also PARA 1054 note 1 post.

4 For the meaning of 'executed' and 'execution' see PARA 1007 note 5 ante.

5 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

6 For the meaning of 'stamped' see PARA 1007 note 9 ante.

7 Stamp Act 1891 s 15(2)(a), (b). As to requiring the commissioners' opinion see PARA 1111 post.

8 Ibid s 15(1). Interest is payable at the rate of 5% per annum from the day when the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty: s 15(1).

9 Ie an instrument referred to in note 3 supra.

10 Stamp Act 1891 s 15(2)(c). It seems that the fine is not exacted in practice: see PARA 1114 post.

11 Ie under ibid s 15(1): see infra.

12 Ibid s 15(2)(c). It seems that the further penalty is not exacted by the commissioners (as to whose power to remit penalties see the text to note 14 infra), but that it would be exacted by a court: cf s 14(1); and CIVIL PROCEDURE vol 11 (2009) PARA 959.

13 Stamp Act 1891 s 15(1).

14 Ibid s 15(3)(b) (amended by the Finance Act 1895 ss 15, 19, Schedule).

15 Stamp Act 1891 s 15(4).

16 For these purposes, a lease gives effect to an agreement if it is granted subsequent to the agreement and either is in conformity with the agreement or relates to substantially the same property and term as the agreement: Finance Act 1994 s 240(3).

17 Ibid s 240(1). This provision applies to agreements executed on or after 6 May 1994: s 240(4).

18 Ibid s 240(2). This provision applies to any lease executed on or after 6 May 1994: s 240(4).

19 Ie under the Stamp Act 1891 s 59(1): see PARA 1040 post.

20 See ibid s 59(5) (as amended); and PARA 1041 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

61 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

62 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

63 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1020 Time for stamping instruments executed in the United Kingdom

TEXT AND NOTES 1-15--1891 Act s 15 replaced by ss 15-15B (substituted by Finance Act 1999 s 109(1)). An unstamped or insufficiently stamped instrument may be stamped after being executed on payment of the unpaid duty and any interest or penalty payable, and any interest or penalty payable on stamping must be denoted on the instrument by a particular stamp: 1891 Act s 15.

Interest is payable, at the rate applicable under the Finance Act 1989 s 178 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1813), on the stamping of an instrument which is chargeable with ad valorem duty and is not duly stamped within 30 days after the day on which the instrument was executed (whether in the United Kingdom or elsewhere), and runs from the end of the 30-day period until the date of payment: 1891 Act s 15A(1)-(3). The amount on which interest is payable is reduced by any sum lodged with the Commissioners of Inland Revenue in respect of the duty, and is rounded down to the nearest £5 but no interest is payable if the amount so calculated is less than £25: s 15A(2), (4). Such interest is payable without deduction of income tax and is not deductible in computing income or profits for any tax purposes: s 15A(5).

A penalty is payable on the stamping of an instrument which is not presented for stamping within 30 days after the day on which it is executed (in the case of an instrument executed in the United Kingdom or which relates to land in the United Kingdom) or after the day on which it is first received in the United Kingdom (in the case of an instrument executed outside the United Kingdom and which does not relate to land in the United Kingdom), unless there is a reasonable excuse for the delay: s 15B(1), (5) (s 15B(1) amended by Finance Act 2002 s 114(2), (4)). For this purpose, every instrument that (whether or not it also relates to any other transaction) relates to a transaction which to any extent involves land in the United Kingdom is an instrument relating to land in the United Kingdom: 1891 Act s 15B(1A) (added by Finance Act 2002 s 114(3)). If the instrument is so presented within one year after the 30-day period has expired, the maximum penalty is the lower of £300 or the amount of the unpaid duty; and if it is presented later, the maximum penalty is the higher of those figures: 1891 Act s 15B(2), (3). The commissioners may mitigate or remit any penalty: s 15B(4). These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122.

Finance Act 1986 ss 69(5), 72(3) repealed except in relation to instruments relating to units under unit trust schemes (see PARA 1121A): Finance Act 1999 Sch 20 Pt V(1).

TEXT AND NOTES 16-18--Finance Act 1994 s 240 replaced by ss 240, 240A (substituted by Finance Act 1999 Sch 12 para 4). If there are presented for stamping at the same time in pursuance of the Finance Act 1999 Sch 13 (1) an agreement for a lease, and (2) the lease which gives effect to that agreement, and the duty (if any) chargeable on the

agreement is paid, then the provisions for the payment of interest on late stamping apply in relation to the agreement as if the reference to the day on which the instrument was executed were to the day on which the lease was executed, and for the purposes of the penalty provisions, the agreement is treated as if it had been executed at the same time and place as the lease, and (where the lease was executed outside the United Kingdom), as if it had been first received in the United Kingdom at the same time as the lease: 1994 Act s 240(1)-(3). For these purposes, a lease gives effect to an agreement if the lease is granted subsequent to the agreement and either is in conformity with it or relates to substantially the same property and term: s 240(4). A lease is not treated as duly stamped unless (a) it contains a certificate that there is no agreement to which it gives effect, or (b) it is stamped with a stamp denoting (i) that there is an agreement to which it gives effect which was chargeable with duty, or (ii) the duty paid on the agreement to which it gives effect: s 240A. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(iii) Penalties for Late Stamping/1020A. Interest on repayment of duty overpaid etc.

**1020A. Interest on repayment of duty overpaid etc.**

Any repayment by the Commissioners of Inland Revenue of duty, of an amount lodged with them in respect of the duty payable on stamping an instrument (if the instrument is presented for stamping, is duly stamped, and a repayment then arises) or of any penalty on late stamping[1] is payable with interest[2] for the period between the relevant time[3] and the date on which the order for payment is issued[4]. No such interest is payable, if it is less than £25, or in respect of a payment made in consequence of an order of judgment of a court having power to allow interest on the payment[5].

These provisions do not apply to transfers or other instruments relating to units under a unit trust scheme[6].

1 Ie under the enactments relating to stamp duty: see PARA 1020.

2 At the rate applicable under the Finance Act 1989 s 178: see INCOME TAXATION vol 23(2) (Reissue) PARA 1813.

3 In the case of a repayment of duty or any penalty on late stamping, the relevant time is 30 days after the date on which the instrument in question was executed or, if later, the date on which the payment of duty or penalty was made: Finance Act 1999 s 110(2). In the case of repayment of an amount lodged, the relevant time is 30 days after the day on which the instrument was executed or, if later, the date on which the amount was lodged with the commissioners: s 110(3). These provisions also apply to allowances made in cash in respect of spoiled or misused stamps, or lost or spoiled documents, under Stamp Duty Management Act 1891 ss 11, 12A (see PARA 1109): Finance Act 1999 s 110(4), (5). The relevant date is (1) the date on which the duty was paid for the stamp in respect of which the allowance is made, or (2) the date on which the duty or penalty was paid, as the case may be: s 110(4), (5).

4 Ibid s 110(1), (2). Such interest is not income of the recipient for any tax purpose: s 110(8).

5 Ibid s 110(6), (7).

6 Ibid s 122. As to dealings with unit trusts see PARA 1121A.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

64 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

65 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

66 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(iii) Penalties for Late Stamping/1021. Time for stamping instruments executed abroad.

**1021. Time for stamping instruments executed abroad.**

Instruments[1] first executed[2] out of the United Kingdom[3] may be stamped[4] without a penalty within 30 days after their first receipt in the United Kingdom[5], and subsequently upon the same terms as regards the payment of a penalty as instruments first executed in the United Kingdom[6].

Where an instrument is chargeable with ad valorem duty in respect of any money in any foreign currency, the duty is calculated on the value, as at the date of the instrument, of the money in British currency according to the current rate of exchange[7].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 For the meaning of 'executed' see PARA 1007 note 5 ante.

3 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

4 For the meaning of 'stamped' see PARA 1007 note 9 ante.

5 Stamp Act 1891 s 15(2)(a), (3)(a). Section 15(3)(a) is subject to any express provision to the contrary, but no such provision appears to be in force. A prohibition relating to a particular class of instrument and not referring expressly to instruments executed abroad has been construed as referring only to instruments executed in the United Kingdom (*The Belfort* (1884) 9 PD 215, DC); but see *Re English, Scottish and Australian Chartered Bank* [1893] 3 Ch 385 at 411-412, CA, per Lindley LJ. The correctness of the practice based on *The Belfort* supra has been doubted. Certain instruments chargeable with ad valorem duty with respect to which the opinion of the Commissioners of Inland Revenue has been required must be stamped within 14 days after assessment: see the Stamp Act 1891 s 15(2)(b); and PARA 1020 ante.

6 See ibid s 15(1), (2)(c); and PARA 1020 ante.

7 See ibid s 6(1); and PARA 1043 post. 'Money' includes all sums expressed in British or in any foreign or colonial currency: s 122(1).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

67 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

68 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

69 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

## (iv) Manner of Stamping

### 1022. Impressed stamps.

Stamp duties must be paid and denoted in accordance with the regulations contained in the enactments[1] relating to such duties[2], and, except where express provision is made to the contrary[3], must be denoted by impressed stamps[4]. Although stamp duty was once paid by means of the purchase of stamped material or adhesive stamps, the modern practice is to stamp almost all instruments[5] after execution by a stamp or stamps impressed by the Stamp Office upon payment of the duty chargeable on the instrument and any penalty for late stamping[6]. In general, an instrument may be stamped by the Stamp Office with or without adjudication[7] by the Commissioners of Inland Revenue. A party may choose to have the instrument assessed by means of the adjudication procedure in order to have the instrument stamped with a particular stamp denoting that it is duly stamped so that no objection may subsequently be taken to the sufficiency of the stamp[8], or where a dispute as to the duty payable on the instrument arises between a party and the commissioners, so as to enable the party to appeal to the High Court against the commissioners' assessment[9]. Certain instruments are not, however, to be taken to be duly stamped unless they are presented for adjudication[10] or produced to the commissioners[11]. Certain instruments otherwise liable to fixed duty are exempt and need not be produced if certified in the appropriate manner[12]. A deed on which the stamp was obliterated has been presumed duly stamped[13].

1 Ie the Stamp Act 1891: see PARA 1007 et seq ante, 1023 et seq post.

2 Ibid s 2. As to composition for stamp duties in certain cases see PARA 1106 post.

3 The Treasury has power to make regulations as to the method of denoting stamp duty: see the Finance Act 1993 s 204; and PARA 1025 post. At the date at which this volume states the law, no such regulations had been made.

4 Stamp Act 1891 s 2. 'Stamp' means a stamp impressed by a die as well as an adhesive stamp: s 122(1). In practice, adhesive stamps are no longer used: see the text to notes 5-6 infra.

5 The only exceptions would appear to be stock transfer forms which may be purchased prestamped with fixed duty of 50p, and bearer instruments which are stamped before issue although duty is paid subsequently: see PARA 1068 post. For the meaning of 'instrument' see PARA 1001 ante.

6 As to the time in which instruments may be stamped after execution without penalty and the penalty for late payment see PARAS 1020-1021 ante.

7 Ie adjudication under the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

8 See PARA 1111 post.

9 See PARA 1112 post.

10 See PARA 1111 post.

11 See PARA 1026 post.

12 See PARA 1083 post.

13 *Doe d Fryer v Coombs*(1842) 3 QB 687: see CIVIL PROCEDURE vol 11 (2009) PARA 961.

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

70 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

71 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the

transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

72 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(iv) Manner of Stamping/1023. Placing of stamp.

**1023. Placing of stamp.**

Every instrument[1] must be stamped[2] so that the stamp[3] appears on the face of the instrument and cannot be used for or applied to any other instrument on the same piece of material[4].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 For the meaning of 'stamped' see PARA 1007 note 9 ante.

3 For the meaning of 'stamp' see PARA 1022 note 4 ante.

4 See the Stamp Act 1891 s 3(1). For the meaning of 'material' see PARA 1014 note 2 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

73 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

74 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by

Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

75 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see para 1095), 10 (see paras 1027, 1077-1079, 1081), 12 (see para 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see para 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(iv) Manner of Stamping/1024. Denoting stamps.

**1024. Denoting stamps.**

Where the stamp duty with which an instrument[1] is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the latter duty is denoted upon the first-mentioned instrument by a special stamp known as a 'denoting stamp' impressed by the Commissioners of Inland Revenue upon production of both the instruments[2].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 Stamp Act 1891 s 11. Four classes of denoting stamp are now in use:

1 (1) the denoting stamp inscribed 'Duplicate or counterpart: Original stamped with 50p'. This is used on duplicates and counterparts (stamped 50p) of instruments charged with more than 50p. If the original is not charged more than 50p, the duplicate attracts the same stamp duty and so needs no denoting stamp: see PARA 1079 post. A counterpart of a lease, not executed by the lessor or grantor, does not require a denoting stamp: see PARA 1079 post;

2 (2) the 'duty paid' denoting stamp. This is applicable to leases made in conformity with agreements stamped ad valorem (see PARA 1054 post), and to a conveyance made in conformity with an agreement stamped ad valorem (see PARA 1040 post);

3 (3) the denoting stamp inscribed 'Original security duly stamped' used for those bearer instruments chargeable under s 1, Sch 1, 'Bearer instrument' para (4) (as added and amended) (see PARA 1066 post). As to the prospective abolition of this head of charge see PARA 1004 ante;

4 (4) the 'bearer instrument' denoting stamp indicating that duty was paid on issue (see the Finance Act 1963 s 60(3); and PARA 1068 post). As to the prospective abolition of this head of charge see PARA 1004 ante.

As to the 'particulars produced' stamp required on certain transfers on the sale of freeholds and leases see PARA 1026 post; and as to the power to make regulations prescribing the method of denoting stamp duty see PARA 1025 post. That power has not, however, been exercised.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

76 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

77 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

78 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a

person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(iv) Manner of Stamping/1025. Power to make regulations as to method of denoting stamp duty.

**1025. Power to make regulations as to method of denoting stamp duty.**

The Treasury may make regulations[1] as to the method by which stamp duty is to be denoted[2]. In particular, such regulations may:

32 (1) provide for duty to be denoted by impressed stamps or adhesive stamps or by a record printed or made by a machine or implement or by such other method as may be prescribed[3];
33 (2) provide for one method only to be used, whether generally or in prescribed cases[4];
34 (3) provide for alternative methods to be available, whether generally or in prescribed cases[5];
35 (4) make different provision for different cases[6];
36 (5) provide that, where stamp duty is denoted by a method which, in the case of the instrument concerned, is required or permitted by the law in force at the time it is stamped, the method is to be treated for the purposes of the statutory provisions relating to the admissibility of instruments in evidence[7] as being in accordance with the law in force at the time when the instruments was first executed[8];
37 (6) include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury to be necessary or expedient[9]; and
38 (7) make provision in such way as the Treasury thinks fit, and in particular may amend or repeal or modify the effect of any provision of any Act[10].

This power to make regulations has not, however, been exercised[11].

1 The power to make regulations under the Finance Act 1993 s 204 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 204(7).

2 Ibid s 204(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ibid s 204(2)(a). 'Prescribed' means prescribed by regulations under s 204: s 204(6).

4 Ibid s 204(2)(b). Cases may be designated by reference to the type of instrument concerned, the geographical area involved, or such other factors as the Treasury thinks fit: s 204(2).

5 Ibid s 204(2)(c). See also note 4 supra.

6 Ibid s 204(2)(d). See also note 4 supra.

7 Ie the Stamp Act 1891 s 14(4): see PARA 1007 ante.

8 Finance Act 1993 s 204(3).

9 Ibid s 204(4).

10 Ibid s 204(5). At the date at which this volume states the law, no such regulations had been made.

11 See note 10 supra.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

79 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

80 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2)

Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

81 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1025 Power to make regulations as to method of denoting stamp duty**

TEXT AND NOTE 8--Word 'first' omitted: Finance Act 1993 s 204(3) (amended by the Finance Act 2000 Sch 40 Pt III).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(2) THE CHARGE TO STAMP DUTY/(iv) Manner of Stamping/1026. Produced stamps; sale of land, grant or sale of lease.

**1026. Produced stamps; sale of land, grant or sale of lease.**

On the occasion of any transfer on sale of the fee simple of land[1] or the grant[2] or any transfer on sale of any lease[3] of land for a term of seven or more years[4], the transferee, lessee or proposed lessee must produce to the Commissioners of Inland Revenue the instrument by which the transfer is effected or the lease granted or agreed to be granted[5], and certain requirements as to the furnishing of information[6] must be complied with[7]. For the purpose of admission in evidence[8], an instrument required to be so produced is not deemed to be duly stamped unless it is stamped with a stamp[9] denoting that it has been so produced[10].

The above provisions do not apply in relation to any instrument[11] (an 'exempt instrument') which falls within any class prescribed for these purposes by regulations[12] made by the commissioners[13].

If the instrument is a conveyance or transfer on sale of land, the consideration[14] for which does not exceed the stamp duty threshold[15], and the instrument is certified to this effect[16], the instrument and the information must be produced to the Land Registry with the application for registration, rather than to the commissioners[17].

1 Finance Act 1931 s 28(1)(a).

2 Ibid s 28(1)(b).

3 'Lease' includes an underlease or other tenancy and an agreement for a lease, underlease or tenancy, but not a mortgage; and 'lessee' and 'grant' have corresponding meanings: ibid s 32. 'Mortgage' has the same meaning as in the Law of Property Act 1925 (see MORTGAGE vol 32 (2005 Reissue) PARA 301): Finance Act 1931 s 32.

4 Ibid s 28(1)(c).

5 Ibid s 28(1). Section 28 does not apply with respect to any instrument which relates solely to incorporeal hereditaments or to a grave or right of burial: s 28(3) (amended by the Land Commission Act 1967 ss 87(1), 101, Schs 14, 17). As to production where property is vested or purchased under a statutory power see the Finance Act 1895 s 12; and PARA 1050 post. As to circumstances in which production may be necessary both under s 12 and under the Finance Act 1931 s 28 (as amended) see PARA 1050 note 4 post. Where the original instrument is filed in the Land Registry the Inland Revenue will accept for denoting purposes an office copy issued by the Land Registry provided it clearly shows the amount of stamp duty impressed on the original: Inland Revenue Press Office Notice dated 24 March 1970. See also the Land Registration Act 1925 s 113 (as amended); and LAND REGISTRATION.

6 The transferee, lessee or proposed lessee must furnish to the commissioners a document, signed by him or by some person on his behalf, and showing his address, giving particulars of (1) the description of the instrument; (2) its date; (3) the names and addresses of the transferor and transferee or of the lessor and the lessee; (4) the situation of the land to which the transaction relates, including any dimensions stated in the instrument, and, if necessary for the identification of the land, a description of its boundaries or a plan; (5) the estate or interest transferred and, in the case of a lease or transfer of a fee simple subject to a lease, the term and the rent reserved; (6) the consideration, if any, other than the rent shown under head (5) supra, showing separately any capital payment, any debt released, any debt covenanted to be paid or to which the transaction is made subject, any periodical payment (including any charge) covenanted to be paid, any terms surrendered, any land exchanged and any other thing representing money or money's worth comprised in the consideration for the transaction; (7) any minerals, mineral rights, sporting rights, timber or easements reserved and any restrictions, covenants or conditions affecting the value of the estate or interest transferred or granted; and (8) the information given to the transferee or lessee by any local authority in reply to any request made in connection with the transaction whereby that authority was requested to state what entries (if any) relating to the land were shown in the register kept by that authority under the Town and Country Planning Act 1990 s 69(1) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 466): Finance Act 1931 s 28(1), Sch

2 (amended by the Land Commission Act 1967 Sch 14 and reprinted by virtue of s 87(2) in Sch 15; further amended by the Town and Country Planning Act 1971 s 291(1), Sch 23 Pt II; and by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 1(2)). 'Local authority' has the same meaning as in the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 3): Finance Act 1931 s 28(6) (added by the Land Commission Act 1967 Sch 14; amended by the Town and Country Planning Act 1971 Sch 23 Pt II; and by the Planning (Consequential Provisions) Act 1990 Sch 2 para 1(1)). 'Minerals' includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or by surface working: Finance Act 1931 s 32.

7 Ibid s 28(1). If the transferee, lessee or proposed lessee fails to produce the instrument within 30 days after its execution or, if it was first executed out of Great Britain, after it was first received in Great Britain, or to comply with the requirements of Sch 2 (as amended: see note 6 supra) as to giving information, he is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 28(1) (amended by the Land Commission Act 1967 Sch 14; and by virtue of the Criminal Justice Act 1982 ss 38, 46). On the grant of a lease of land for seven or more years, if the agreement for the lease is produced and the requirements of the Finance Act 1931 Sch 2 (as amended) are complied with on its production, the lease itself need not be produced unless it is inconsistent with the agreement, but, if it is produced and application is made for the purpose, the commissioners must stamp it with a denoting stamp: s 28(2). As to instruments to which the requirement does not apply see notes 5 supra, 17 infra. The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and MAGISTRATES. For the meaning of 'Great Britain' see PARA 1007 note 6 ante.

8 As to the inadmissibility in evidence of instruments not duly stamped see the Stamp Act 1891 s 14(4); and PARA 1007 ante.

9 Such a stamp is known as a 'particulars produced stamp'.

10 Finance Act 1931 s 28(4). This is so notwithstanding the Stamp Act 1891 s 12 (as amended), by which an instrument stamped with an adjudication stamp is to be admissible in evidence (see s 12(5); and PARA 1111 post): Finance Act 1931 s 28(4). For equivalent provisions relating to Northern Ireland see the Finance Act 1994 ss 244, 245.

11 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1985 s 98(4)).

12 The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: ibid s 89(4).

13 Ibid s 89(1). Regulations so made may (1) provide that the particulars mentioned in the Finance Act 1931 Sch 2 (as amended: see note 6 supra) are to be furnished to the commissioners, in accordance with the requirements of the regulations, in respect of exempt instruments or such descriptions of exempt instruments as may be prescribed by the regulations; and (2) make different provision in relation to different cases or kinds of case and in respect of different parts of Great Britain: Finance Act 1985 s 89(2). In exercise of the power so conferred, the commissioners have made the Stamp Duty (Exempt Instruments) Regulations 1985, SI 1985/1688, which came into operation on 1 January 1986 (reg 1): see the text and notes 14-17 infra.

14 As to what amounts to the consideration for a conveyance on sale in this context see PARA 1031 post.

15 As to the stamp duty threshold for a conveyance on sale, other than a transfer of stock or marketable securities, see PARA 1027 post.

16 Ie certified in accordance with the Finance Act 1958 s 34(4) (as prospectively amended): see PARA 1028 post.

17 The Finance Act 1931 s 28 (as amended) does not apply to instruments by which any transfer on sale within the meaning of s 28(1)(a) or (c) is effected and in respect of which the following conditions are fulfilled: (1) the instrument is executed on or after 1 January 1986; (2) the consideration for the sale in question is of an amount or value such that no stamp duty is chargeable (see PARA 1027 post) and the instrument is certified in accordance with the Finance Act 1958 s 34(4) (as prospectively amended) (see PARA 1028 post); (3) the land in question is registered land or, if unregistered, it is an instrument to which the Land Registration Act 1925 s 123 (as amended) applies or which effects a transfer in the case of which the transferee is deemed to be the applicant for first registration under the Land Registration Rules 1925, SI 1925/1093, r 72: Stamp Duty (Exempt

Instruments) Regulations 1985 reg 3. The instrument must be delivered to the Land Registry with the application for registration and a document signed by the transferee or by some person on his behalf and showing his address giving all the particulars set out in the Finance Act 1931 Sch 2 (as amended): Stamp Duty (Exempt Instruments) Regulations 1985 reg 4. The Chief Land Registrar must furnish those particulars to the commissioners: reg 5. Any person who fails to comply with any of these requirements is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Finance Act 1985 s 89(3).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

82 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

83 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch

10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

84 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1026 Produced stamps; sale of land, grant or sale of lease**

NOTES 5-7--1967 Act repealed: Statute Law (Repeals) Act 1998.

NOTE 5--The Finance Act 1931 s 28(3) does not apply to a stamp duty land tax transaction within the Finance Act 2003 Sch 19 para 1(2): Finance Act 1931 s 28(3) (amended by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867). Land Registration Act 1925 repealed and replaced by the Land Registration Act 2002; see LAND REGISTRATION.

NOTE 6--1931 Act s 28(6) repealed: Statute Law (Repeals) Act 1998.

NOTE 10--Finance Act 1994 s 245 amended, as from a date to be appointed, by Treasury order: Finance (No 2) Act 2005 s 48(2), (5).

## (3) INSTRUMENTS LIABLE TO AD VALOREM DUTY

## (i) Conveyance or Transfer on Sale and other Instruments Chargeable

## *A. CONVEYANCE ON SALE*

### 1027. The charge, threshold and rate of duty; conveyance on sale of property other than stock or marketable securities.

Subject to certain exemptions[1], ad valorem stamp duty is imposed in respect of a conveyance[2] or transfer on sale[3] of any property[4] by reference to the amount or value of the consideration for the sale[5]. Where the property transferred or vested is property other than stocks or marketable securities[6], duty is charged at the following rates: (1) where the amount or value of the consideration does not exceed £60,000 and the instrument[7] is certified[8] at £60,000, nil; (2) where the instrument is not certified, but the amount or value of the consideration does not exceed £500, the rate of 50 pence for every £50 or part of £50 of the consideration; and (3) where the instrument is not certified and the amount or value of the consideration exceeds £500, the rate of £1 for every £100 or part of £100 of the consideration[9].

1 See PARA 1082 et seq post.

2 For the meaning of 'conveyance on sale' see PARA 1030 post.

3 For the meaning of 'sale' see PARA 1031 post.

4 For the meaning of 'property', and as to the property passing by the conveyance, see PARAS 1032-1033 post.

5 See the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (amended by the Finance Act 1958 s 40(5), Sch 11 Pt III; and the Finance Act 1963 s 73(8), Sch 14 Pt IV); the Finance Act 1963 s 55(1) (as amended: see note 9 infra). As to the consideration by reference to which duty is chargeable see PARA 1034 post. As to the interaction between stamp duty and VAT on the sale of new non-residential property see Inland Revenue Statement of Practice SP11/91, 12 September 1991.

6 As to the rate of duty on transfers of stock or marketable securities on sale see PARA 1029 post.

7 For the meaning of 'instrument' see PARA 1001 ante.

8 Ie certified in accordance with the Finance Act 1958 s 34(4) (as prospectively amended): see PARA 1028 post.

9 Finance Act 1963 s 55(1) (amended by the Finance Act 1982 s 128(2); the Finance Act 1984 s 109(1); the Finance Act 1986 s 64; and the Finance Act 1993 s 201(1)). These rates apply to instruments executed on or after 23 March 1993 or instruments executed on or after 16 March 1993 and not stamped before 23 March 1993: s 201(2). For the rates of duty prior to 23 March 1993 see the Stamp Act 1891, Sch 1, 'Conveyance or Transfer on Sale' (as originally enacted); the Finance (1909-10) Act 1910 s 73 (repealed); the Finance Act 1920 s 36(1) (repealed); the Finance Act 1947 ss 52(1), (2)(a)(iii), 54(3)-(6) (repealed); the Finance Act 1952 s 73 (repealed); the Finance Act 1953 s 31(2) (repealed); the Finance Act 1956 s 37 (repealed); the Finance Act 1959 s 31 (repealed); the Finance Act 1963 s 55(1) (as originally enacted); the Finance Act 1967 s 27(1) (repealed); the Finance Act 1970 s 32(b), Sch 7 para 10 (repealed); the Finance Act 1974 s 49(1), Sch 11 para 4(2)

(repealed); the Finance Act 1980 s 95(1) (repealed); the Finance Act 1982 s 128(1) (repealed); the Finance Act 1984 s 109(1) (spent); and the Stamp Duty (Temporary Provisions) Act 1992 s 1 (see PARA 1105 post).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

85 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

86 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in

the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

87 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1027 The charge, threshold and rate of duty; conveyance on sale of property other than stock or marketable securities**

TEXT AND NOTES--No ad valorem stamp duty is chargeable on a conveyance or transfer of an estate or interest in land situated in a disadvantaged area, ie an area designated as such by regulations made by the Treasury, which regulations may designate specified areas in disadvantaged areas, or provide for areas of a description specified in the regulations to be designated as disadvantaged areas; and such designation of an area as a disadvantaged area may have effect for such period as may be specified by or determined in accordance with the regulations: Finance Act 2001 s 92(1), (4), (5), (8), (11) (s 92(1) amended by Finance Act 2002 s 110(1)). Such regulations may make different provision for different cases, and may contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient; and the power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: Finance Act 2001 s 92(9), (10). Where stamp duty would otherwise be chargeable on an instrument, this provision has effect in relation to the instrument only of it is certified to the Commissioners of Inland Revenue as being an instrument on which stamp duty is not chargeable by virtue of this provision; and no such instrument is taken to have been duly stamped unless (1) it is stamped in accordance with the Stamp Act 1891 s 12 (see PARA 1111) with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped; or (2) it is stamped with the duty

to which it would have been liable but for this provision: Finance Act 2001 s 92(2), (3). See the Stamp Duty (Disadvantaged Areas) Regulations 2001, SI 2001/3747.

Where any land is situated partly in a disadvantaged area and partly outside such an area, then for the purpose of determining liability to stamp duty (a) the consideration in respect of which duty would otherwise be chargeable are to be apportioned, on such basis as is just and reasonable, as between the part of the land which is situated in a disadvantaged area and the part which is not so situated; and (b) the instrument is chargeable only in respect of the consideration attributed to the latter: Finance Act 2001 s 92(6), Sch 30 para 1(1), (2) (Sch 30 para 1(1) amended by Finance Act 2002 s 110(4)). Where stamp duty, or a greater amount of stamp duty, would be chargeable on an instrument but for the Finance Act 2001 Sch 30 para 1(1), (2), those provisions have effect in relation to it only if the instrument is certified to the commissioners as being an instrument in relation to which those provisions have effect; and no such instrument is taken to be duly stamped unless it is stamped in a manner similar to that set out in heads (1) and (2): Sch 30 para 1(3), (4). Section 92 and Sch 30 are to be construed as one with the Stamp Act 1891: Finance Act 2001 s 92(7).

For circumstances in which the provisions above do not apply, see the Stamp Duty (Disadvantaged Areas) (Application of Exemptions) Regulations 2003, SI 2003/1056 (amended by Finance Act 2005 Sch 9 para 2).

As to restriction of exemption in the case of residential property etc see PARA 1027.

These provisions now only apply to stock or marketable securities: Finance Act 2003 s 125. Where stamp duty under the Finance Act 1999 Sch 13 Pt I is chargeable on an instrument that relates partly to stock or marketable securities and partly to other property, the consideration in respect of which duty would otherwise be charged must be apportioned, on a just and reasonable basis, as between the stock or marketable securities and the other property, and the instrument is charged only in respect of the consideration relating to the stock or marketable securities: Finance Act 2003 s 125, Sch 20 para 1.For this purpose 'stock or marketable securities' includes any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(3) (Sch 15 para 31 substituted by Finance Act 2004 Sch 41 para 3).

TEXT AND NOTES 1-9--Stamp duty is now chargeable on a conveyance or transfer on sale: 1999 Act Sch 13 para 1(1). This does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2). Where a company acquires any shares in itself by virtue of the Companies Act 2006 s 690 (see COMPANIES vol 15 (2009) PARA 1234) or otherwise, the Finance Act 1999 Sch 13 para 1(1) does not apply to any instrument by which the shares are transferred to the company. Where a company holds any shares in itself by virtue of the Companies Act 2006 s 724 (see COMPANIES vol 15 (2009) PARA 1251) or otherwise, the Finance Act 1999 Sch 13 para 1(1) does not apply to any instrument in relation to which the Finance Act 1986 s 67(2) (see PARA 1070) or s 70(2) (see PARA 1072) applies: Finance Act 1999 Sch 13 para 1(3)-(6) (added by Finance Act 2003 Sch 40 para 5; Finance Act 1999 Sch 13 para 1(5) amended by Finance Act 2008 Sch 32 para 10; and SI 2009/1890). Transfer on sale' includes every instrument, and every decree or order of a court or commissioners, by which any property, or any estate or interest in property, is, on being sold, transferred or vested in the purchaser or another person on behalf of or at the direction of the purchaser: Finance Act 1999 Sch 13 para 1(2) (amended by Finance Act 2003 Sch 20 para 6). Stamp duty is not chargeable under the Finance Act 1999 Sch 13 para 1 on a transfer of stock or marketable securities where the amount or value of the consideration for the sale is £1,000 or under, and the instrument is certified at £1,000: Sch 13 para 1(3A) (added by Finance Act 2008 s 98(3)).

Subject to any enactment setting a different rate or setting an upper limit on the amount of duty chargeable, the rates of duty are now expressed in percentage terms as follows: (1) where the amount or value of the consideration is £125,000 or under and the instrument is certified at £125,000, nil; (2) where the amount or value of the consideration is £250,000 or under and the instrument is certified at £250,000, 1 per cent; (3) where the amount or value of the consideration is £500,000 or under and the instrument is certified at £500,000, 3 per cent; and (4) in any other case, 4 per cent: Finance Act 1999 Sch 13 para 4 (amended by Finance Act 2000 s 114; and Finance Act 2006 s 162(3)). These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122. For the prospective partial repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1027A. Restriction of exemption in the case of residential property etc.

**1027A. Restriction of exemption in the case of residential property etc.**

Regulations may provide for an exemption[1] not to apply in cases specified by reference to either or both of whether the land in question is residential property and the amount or value of the consideration[2].

'Residential property' means:

39 (1) a building[3] that is used or suitable for use as a dwelling[4], or is in the process of being constructed or adapted for such use;
40 (2) land that is or forms part of the garden or grounds of a building within head (1) above, including any building or structure on such land;
41 (3) an interest in or right over land that subsists for the benefit of a building within head (1) above or of land within head (2) above[5].

1 Ie an exemption conferred by the Finance Act 2001 s 92 (see para 1027) or Sch 30 (see para 1037).

2 Ibid s 92A(1) (ss 92A, 92B added by the Finance Act 2002 s 110(3)). Regulations may contain provision corresponding to or modifying that made by the 2001 Act Sch 30 in the case of a building or land only part of which is residential property within head (1) or (2) of the text, or an interest in land that subsists only partly as mentioned in head (3) of the text; and where by virtue of such regulations the availability of an exemption depends on the land in question not being, or not being entirely, residential property, the certification under s 92(2) (see para 1027) must include a statement that the land is not residential property or, as the case may be, that it is not residential property to the extent stated: s 92A(2), (3).

Where by virtue of regulations under s 92A the availability of an exemption depends on the amount or value of the consideration not exceeding a specified amount, the instrument in question must be certified at that amount (or at a lower amount); and the reference to an instrument being certified at an amount must be construed in accordance with the Finance Act 1999 Sch 13 para 7 (see paras 1040, 1041) as if the reference were contained in Sch 13 para 4: Finance Act 2001 s 92A(4).

Regulations under s 92A may be made by the Treasury, by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 92A(5), (7). Such regulations may make different provision for different cases, and may contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient: s 92A(6); Finance Act 2002 s 110(6) (2001 Act s 92A as added). See the Stamp Duty (Disadvantaged Areas) (Application of Exemptions) Regulations 2003, SI 2003/1056 (amended by the Finance Act 2005 Sch 9 para 2).

3 'Building' includes part of a building: 2001 Act s 92B(10).

4 For this purpose, use of a building as (1) residential accommodation for school pupils; (2) residential accommodation for students (other than accommodation within head (b)); (3) residential accommodation for members of any of the armed forces; or (4) an institution that is the sole or main residence of at least 90 per cent of its residents and does not fall within any of heads (a)-(f), is use as a dwelling. Use of a building as (a) a home or other institution providing residential accommodation for children; (b) a hall of residence for students in further or higher education; (c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder; (d) a hospital or hospice; (e) a prison or similar establishment; (f) a hotel or inn or similar establishment, is not use as a dwelling; and where a building is used in a manner specified in heads (a)-(f), no account is to be taken for the purposes of head (1) of the text of its suitability for any other use: s 92B(2)-(4). Where a building that is not in use is suitable for at least one of the uses specified in heads (1)-(4) and at least one of those specified in heads (a)-(f), then (i) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in either heads (1)-(4) or heads (a)-(f), no account is to be taken for the purposes of head (1) of the text of its suitability for any other use; and otherwise, the building is to be treated for those purposes as suitable for use as a dwelling: s 92B(5).

Regulations under s 92A may provide that, where there is a single contract for the conveyance, transfer or lease of land comprising or including six or more separate dwellings, none of that land counts as residential property for the purposes of the regulations; and the Treasury may by order amend s 92B so as to change or clarify the cases where use of a building is, or is not, use of a building as a dwelling for the purpose of head (1) of the TEXT: s 92B(6), (7). An order under s 92B(7) must be made by statutory instrument, subject to annulment in pursuance of a resolution of the House of Commons, and may contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient: s 92B(8), (9).

5 Ibid s 92B(1).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

88 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

89 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the

consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

90 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see para 1095), 10 (see paras 1027, 1077-1079, 1081), 12 (see para 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see para 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1028. Certification for nil rate.

**1028. Certification for nil rate.**

An instrument[1] is certified for £60,000 for the purpose of the stamp duty threshold[2] at a particular amount if it contains a statement certifying that the transaction effected by it does not form part of a larger transaction or series of transactions[3] in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds that amount[4]. For this purpose any sale or contract or agreement for the sale of goods, wares or merchandise[5] is to be disregarded in the case of an instrument chargeable as a conveyance or transfer on sale[6], other than an actual conveyance or transfer of the goods, wares or merchandise, with or without other property[7], or a sale agreement chargeable[8] with conveyance duty[9]. The certificate is to be construed as leaving out of account any matter which is to be so disregarded[10].

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1958 s 40(2)(f)).

2 Ie the threshold for ad valorem duty on a conveyance or transfer on sale of property other than stock or marketable securities: see PARA 1027 ante.

3 See *A-G v Cohen* [1937] 1 KB 478, [1937] 1 All ER 27, CA, where the same purchaser bought six separate lots at auction, six contracts were signed and six separate abstracts were furnished, and it was held that there was not a series of transactions.

4 Finance Act 1958 s 34(4). Section 34(4) is prospectively amended, and s 34(4A) added, by the Finance Act 1991 s 113 as from a day to be appointed by statutory instrument: see note 9 infra.

5 As to the meaning of 'goods, wares or merchandise' see PARA 1040 note 5 post.

6 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

7 Finance Act 1958 s 34(4)(a)(i).

8 Ie by reference to the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended) under s 59 (as amended): see PARA 1040 post.

9 Finance Act 1958 s 34(4)(a)(ii). Section 34(4)(a) is prospectively substituted by the Finance Act 1991 s 113(1), (2) to read 'any sale or contract or agreement for the sale of exempt property is to be disregarded'. This amendment will apply to an instrument (1) executed in pursuance of a contract made on or after the abolition day; or (2) which is not executed in pursuance of a contract and is executed on or after the abolition day: s 113(4). 'Exempt property' has the same meaning as in s 110 (as amended) (see PARA 1006 note 5 ante): Finance Act 1953 s 34(4A) (prospectively added by the Finance Act 1991 s 113(1), (3)). 'The abolition day' is such day as may be appointed under the Finance Act 1990 s 111(1) (prospective abolition of stamp duty for securities etc: see PARA 1005 ante): Finance Act 1991 s 110(7) (applied by virtue of s 113(5)). At the date at which this volume states the law, no such day had been appointed.

10 Finance Act 1958 s 34(4)(b).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not

apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

91 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

92 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

93 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1028 Certification for nil rate**

TEXT AND NOTES--Replaced. An instrument is certified at a particular amount if it contains a statement that the transaction effected by it does not form part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds that amount: Finance Act 1999 Sch 13 para 6(1). For this purpose, a sale or contract or agreement for the sale of goods, wares or merchandise is to be disregarded in the case of an instrument which is not an actual conveyance or transfer of those goods, wares or merchandise (with or without other property), and in the case of an instrument treated as such a conveyance or transfer only by virtue of Sch 13 para 7 (see PARA 1040), and any statement as mentioned above is to be construed as leaving out of account any matter so disregarded: Sch 13 para 6(2). A sale or contract or agreement for the sale or exchange of exempt property (see PARA 1006) is to be disregarded; and any such statement is to be construed as leaving out of account any matter so disregarded: Finance Act 1991 s 113(1) (substituted by the Finance Act 1999 Sch 14 para 27). These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2). As to their prospective repeal from abolition day, see s 123(3) and PARAS 1004, 1005.

For the application of these provisions where the property transferred is or includes intellectual property see PARA 1096A.

Without prejudice to the Finance Act 2001 s 92A(4) (see PARA 1027A), if or to the extent that a conveyance, transfer or lease is exempted from stamp duty by s 92(1) (see PARA 1027) or Sch 30 para 1 (see PARA 1027) (read with s 92A), the transaction in question is to be disregarded for the purposes of the Finance Act 1999 Sch 13 para 6; and any statement as mentioned in Sch 13 para 6(1) is to be construed as leaving out of account any matter which is to be so disregarded: Finance Act 2001 s 92(6), Sch 30 para 3 (Sch 30 para 3 amended by the Finance Act 2002 s 110(5)).

Goodwill is to be disregarded for the purposes of the Finance Act 1999 Sch 13 para 6, and any statement as mentioned in Sch 13 para 6(1) must be construed as leaving out

of account any matter which is to be so disregarded: Finance Act 2002 s 116(2), Sch 37 para 3.

**1029. The rate of duty; conveyance on sale of stock or marketable securities.**

Subject to certain exemptions[1], ad valorem stamp duty is imposed in respect of a conveyance[2] or transfer on sale[3] of stock[4] or marketable securities[5] at the rate of 50 pence for every £100 or part of £100 of the amount or value of the consideration for the sale[6]. The threshold for ad valorem duty on a conveyance on sale of property[7] does not apply to a conveyance or transfer on sale of stock or marketable securities[8]. Although no duty is chargeable on a contract for the sale of securities[9], an agreement to transfer certain securities for money or money's worth may attract a charge to stamp duty reserve tax[10].

1 See PARA 1082 et seq post.

2 For the meaning of 'conveyance on sale' see PARA 1030 post.

3 For the meaning of 'sale' see PARA 1031 post.

4 'Stock' includes any share in any stocks or funds transferable at the Bank of England or the Bank of Ireland and any share in the stocks or funds of any foreign or colonial state or government, or in the capital stock or funded debt of any county council, corporation, company or society in the United Kingdom or of any foreign or colonial corporation, company or society (see the Stamp Act 1891 s 122(1)), and any unit under a unit trust scheme (Finance Act 1946 s 54(1)). 'Unit' means a right or interest (whether described as a unit, a sub-unit or otherwise) of a beneficiary under the trust instrument; 'unit trust scheme' has the same meaning as in the Financial Services Act 1986 (repealed) (ie a collective investment scheme under which the property in question is held on trust for the participants: see s 75(8); and see also s 75(1)-(7) (as amended)): Finance Act 1946 s 57(1) (amended for these purposes by the Finance Act 1987 s 48). The Treasury may, however, by regulations provide that any scheme of a description specified in them is to be treated as not being a unit trust scheme for these purposes: Finance Act 1946 s 57(1A) (added by the Finance Act 1987 s 48). Such regulations may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient: Finance Act 1946 s 57(1B)(a) (as so added). They must be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 57(1B)(b) (as so added). In exercise of the power so conferred, the Treasury has made the Stamp Duty and Stamp Duty Reserve Tax (Definitions of Unit Trust Schemes) Regulations 1988, SI 1988/268, which came into force on 11 March 1988 (reg 1); and the Stamp Duty and Stamp Duty Reserve Tax (Definition of Unit Trust Schemes) Regulations 1992, 1992/197, which came into force on 1 March 1992 (reg 1).

A unit trust scheme which is (1) a limited partnership scheme; or (2) an approved profit sharing scheme which has been approved in accordance with the Income and Corporation Taxes Act 1988 s 186, Sch 9 Pt II (paras 7-15) (as amended); or (3) a common investment scheme (ie a scheme made by the Lord Chancellor in exercise of the powers conferred on him by the Administration of Justice Act 1982 s 42(1) (see CIVIL PROCEDURE), is excepted from this definition: Stamp Duty and Stamp Duty Reserve Tax (Definitions of Unit Trust Schemes) Regulations 1988 reg 3; Stamp Duty and Stamp Duty Reserve Tax (Definition of Unit Trust Schemes) Regulations 1992 reg 2; Income and Corporation Taxes Act 1988 s 844(3), Sch 30 para 21(3). A unit trust scheme is a limited partnership scheme when the scheme property (ie property of any description, including money, which is held on trust for the participants in the scheme) is held on trust for the general partners and the limited partners in a limited partnership registered under the Limited Partnerships Act 1907 (see PARTNERSHIP vol 79 (2008) PARA 227 et seq): Stamp Duty and Stamp Duty Reserve Tax (Definitions of Unit Trust Schemes) Regulations 1988 regs 2, 4. References to a unit trust scheme are also deemed not to include references (a) to any common investment scheme under the Charities Act 1960 s 22 (repealed) or the Charities Act 1993 s 24 (see CHARITIES vol 8 (2010) PARAS 419-420) or any common deposit scheme under the Charities Act 1960 s 22A (repealed) or the Charities Act 1993 s 25 (see CHARITIES vol 8 (2010) PARA 420) (Finance Act 1963 s 65(2)(a) (amended by the Charities Act 1992 s 78(1), Sch 6 para 2; the Charities Act 1993 s 98(1), Sch 6 para 5)); (b) to any unit trust scheme the units in which are, under the terms of the trust instrument relating to the scheme, required to be held only by bodies of persons established for charitable purposes (as to the meaning of which see PARA 1093 note 3 post) only or trustees of trusts so established (Finance Act 1963 s 65(2)(b)); (c) common investment arrangements made by the trustees of exempt approved schemes within the meaning of the Income and Corporation Taxes Act 1988 s 592(1) (see INCOME TAXATION vol 23(1) (Reissue) PARA 187), solely for

the purposes of the scheme (Finance Act 1981 s 110; Income and Corporation Taxes Act 1988 Sch 30 para 21(3); Finance Act 1988 s 146, Sch 13 paras 21, 25).

5 'Marketable security' means a security of such a description as to be capable of being sold in any stock market in the United Kingdom: Stamp Act 1891 s 122(1). See *Texas Land and Cattle Co Ltd v IRC* (1888) 16 R 69 at 70; *Brown, Shipley & Co v IRC* [1895] 2 QB 598, CA; *Speyer Bros v IRC* [1907] 1 KB 246 at 257, CA; *Deddington SS Co Ltd v IRC* [1911] 2 KB 1001, CA. For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

6 See the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended: see PARA 1027 note 5 ante); the Finance Act 1963 s 55(1), (1A) (respectively amended for these purposes, and added, by the Finance Act 1986 s 64(1), (3) in relation to instruments executed in pursuance of a contract made on or after 27 October 1986). As to the consideration by reference to which duty is chargeable see PARA 1034 post.

7 See PARA 1027 ante.

8 Finance Act 1963 s 55(1), (1A) (as amended and added: see note 6 supra). For the rates of duty applicable to a transfer of stock or marketable securities prior to 27 October 1986 see PARA 1111 note 9 ante. The Finance Act 1963 s 55(1A) (as so added) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from a day to be appointed under s 111(1). At the date at which this volume states the law, no such day had been appointed.

9 See the Stamp Act 1891 s 59(1) (as amended); and PARA 1040 post.

10 See PARA 1118 post. As to the prospective abolition of stamp duty reserve tax see PARA 1119 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

94 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

95 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or

marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

96 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1029 The rate of duty; conveyance on sale of stock or marketable security**

TEXT AND NOTES 1-8--Replaced. The rate is now expressed as 0·5 per cent: Finance Act 1999 Sch 13 para 3. The original provision continues to apply in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2). For

the prospective repeal of Sch 13 para 3 as from abolition day, see s 123(3) and PARAS 1004, 1005.

NOTE 4--In the definition of 'stock' reference to the Bank of England is now to the Registrar of Government Stock, reference to the Bank of Ireland is omitted, and the definition also includes any strip (within the meaning of the Finance Act 1942 s 47) of any share in any stocks or funds transferable at the Bank of England and a unit under a unit trust scheme (see PARA 1121A): 1891 Act s 122(1) (amended by the Finance Act 1996 Sch 40 para 1; the Finance Act 1999 Sch 19 para 19; the Irish Registers of Government Stock (Closure and Transfer) Order 2002, SI 2002/2521; and the Government Stock (Consequential and Transitional Provision) (No 2) Order 2004, SI 2004/1662). An employee share ownership plan approved under the Finance Act 2000 Sch 8 is to be treated for this purpose as not being a unit trust: Stamp Duty and Stamp Duty Reserve Tax (Definitions of Unit Trust Scheme) Regulations 1988, SI 1988/268, reg 3(c) (amended by SI 2000/2549).

A unit trust scheme which is a pension funds pooling scheme, ie a unit trust scheme of the description specified in the Income Tax (Pension Funds Pooling Scheme) Regulations 1996, SI 1996/1585, reg 4 is treated as not being a unit trust scheme for the purposes of the Finance Act 1946 Pt VII: Stamp Duty and Stamp Duty Reserve Tax (Pension Funds Pooling Schemes) Regulations 1996, SI 1996/1584, reg 3. 'Unit trust scheme' here has the meaning given by the Financial Services and Markets Act 2000 s 235 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603): SI 1996/1584 (amended by SI 2001/3629).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1030. Meaning of 'conveyance on sale'.

**1030. Meaning of 'conveyance on sale'.**

For the purposes of the law relating to stamp duty[1] 'conveyance on sale' includes every instrument[2], and every decree or order of any court or of any commissioners, by which any property[3], or any estate or interest in any property, upon the sale[4] thereof[5] is transferred to or vested in a purchaser, or any other person on his behalf or by his direction[6]. In this context, an instrument which creates the property sold may be chargeable as a conveyance on sale[7]. An instrument may be a conveyance on sale notwithstanding that a constructive trust of the property conveyed or transferred existed in the purchaser's favour before the conveyance or transfer was executed and notwithstanding that the conveyance or transfer was executed by persons other than the vendor, for example by trustees on his behalf[8].

There are specific provisions which direct that for the purposes of duty under the 'Conveyance or Transfer on Sale' head of charge[9], certain instruments are to be treated as conveyances on sale[10].

Fixed duty of 50 pence is chargeable on conveyances, declarations of trust, partitions or divisions of real property, releases, renunciations and surrenders which are not chargeable as conveyances on sale[11].

1 Ie for the purposes of the Stamp Act 1891 and enactments construed as one with it (see PARA 1009 note 1 ante).

2 For the meaning of 'instrument' see PARA 1001 ante.

3 For the meaning of 'property' see PARA 1032 post.

4 For the meaning of 'sale' see PARA 1031 post.

5 The instrument may not need to convey the precise property agreed to be sold in order to attract duty: see *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL; and PARA 1034 post.

6 Stamp Act 1891 s 54. This definition may include dispositions by personal representatives (see PARA 1031 note 8 post); absolute bills of sale (see the Stamp Act 1891 s 41; and PARA 1007 note 12 ante); a court order sanctioning a scheme by which shares were transferred (*Sun Alliance Insurance Ltd v IRC* [1972] Ch 133, [1971] 1 All ER 135); declarations of trust (*Chesterfield Brewery Co v IRC* [1899] 2 QB 7, DC; see PARA 1078 note 3 post); share transfers executed in blank intended to complete a sale (*Fitch Lovell Ltd v IRC* [1962] 3 All ER 685, [1962] 1 WLR 1325). It also includes a decree or order for, or having the effect of an order for, foreclosure (Finance Act 1898 s 6), but the ad valorem duty on sale on such a decree or order must not exceed the duty on a sum equal to the value of the property to which the decree or order relates, and where the decree or order states that value, that statement is conclusive in determining the amount of the duty (s 6 proviso (a)). Where ad valorem duty is paid on such a decree or order, any conveyance following the decree or order is exempt from the ad valorem duty: s 6 proviso (b).

7 Eg an agreement granting an option to purchase land (*George Wimpey & Co Ltd v IRC* [1975] 2 All ER 45, [1975] 1 WLR 995, CA); sales of annuities (see PARA 1042 post).

8 *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL (see PARA 1034 post). Cf *Henty and Constable (Brewers) Ltd v IRC* [1961] 3 All ER 1146, [1961] 1 WLR 1504, CA.

9 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

10 See PARAS 1040-1042 post (certain agreements chargeable as a conveyance on sale); paras 1043-1045 post (certain exchanges chargeable as a conveyance on sale); para 1046 post (conveyance in satisfaction of a debt or subject to a liability); paras 1048-1049 post (conveyance in contemplation of sale); and PARA 1050 post (property vested on sale or purchased under statute). Certain instruments which relate to units under unit trust schemes are deemed to be conveyances on sale for the purposes of the charge: see PARA 1075 post. The application of the charge is modified in relation to public housing right to buy schemes: see PARAS 1051-1053 post.

11 See PARAS 1077-1078, 1080-1081 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

97 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

98 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the

consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

99 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1030 Meaning of 'conveyance on sale'**

TEXT AND NOTES--Without prejudice to any charge to stamp duty in respect of the same or any other instrument so far as it relates to the transfer of the other property (and subject to the Finance Act 2000 s 119(5)), where (1) an instrument transferring or vesting an estate or interest in land would not otherwise be, or fall to be treated as, a conveyance or transfer on sale for the purposes of stamp duty, but (2) the transfer or vesting of the estate or interest is for consideration, and (3) the consideration is or includes any property ('the other property'), it is taken to be a transfer on sale of the estate or interest: Finance Act 2000 s 118(1), (2), (7), (8). This provision has effect even though the transfer or vesting of the estate or interest is the whole or part of the consideration for a sale of the other property, or the transaction is by way of exchange: s 118(6). If the other property is or includes one or more estates or interests in land and ad valorem duty is chargeable on the conveyance or transfer of all or any of those estates or interests, the amount of duty that would otherwise be chargeable on the transfer on sale in accordance with these provisions is reduced (but not below nil) by the total of that ad valorem duty (s 118(3)); and if, for the purposes of Finance Act

1999 Sch 13 Pt I (paras 1-9) the amount or value of the consideration for that transfer on sale would otherwise exceed the market value of the estate or interest (ie the price which it might reasonably be expected to fetch on a sale at that time in the open market) immediately before the execution of the instrument transferring or vesting it, the amount or value of that consideration is to be taken for those purposes as equal to that market value (Finance Act 2000 s 118(4), (5)).

Where an estate or interest in land is transferred or vested in a company ('A') and (a) the person transferring or vesting the estate or interest ('B') is connected with A, or (b) some or all of the consideration for the transfer or vesting consists of the issue or transfer of shares in a company with which B is connected, an instrument transferring or vesting the estate or interest is taken to be a transfer on sale of the estate or interest: s 119(1), (2). However, s 119 does not apply by virtue of head (a) in any of the following cases: (i) where B holds the estate or interest as nominee or bare trustee for A; (ii) where A is to hold the estate or interest as nominee or bare trustee for B; (iii) where B holds the estate or interest as nominee or bare trustee for some other person and A is to hold it as nominee or bare trustee for that person; (iv) where (in a case not falling within (i) or (iii)) the transfer or vesting is a conveyance or transfer out of a settlement in or towards satisfaction of a beneficiary's interest (which is not an interest acquired for money or money's worth) and the conveyance or transfer is a distribution of property in accordance with the provisions of the settlement; (v) where (in a case not falling within head (ii)) A is a person carrying on a business which consists of or includes the management of trusts and is to hold the estate or interest as trustee acting in the course of that business; (vi) where (in a case not falling within head (ii)) A is to hold the estate or interest as trustee and, apart from the Income and Corporation Taxes Act 1988 s 839(3) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258) would not be connected with B; and (vii) where B is a company, the transfer or vesting is, or is part of, a distribution of assets (whether or not in connection with the winding up of the company), and the estate or interest was acquired by B by virtue of an instrument which is duly stamped: Finance Act 2000 s 120. For transitional provisions relating to excepted cases see the Finance Act 2000 s 131. If the amount or value of the consideration for the transfer would otherwise be less than the market value of the estate or interest (ie the price which it might reasonably be expected to fetch on a sale at that time in the open market) immediately before the execution of the instrument transferring or vesting it (reduced by the value of so much of any actual consideration as does not consist of property), the consideration is deemed to be that market value (as so reduced): s 119(3),(4), (7). 'Company' means any body corporate; 'shares' includes stock and the reference to shares in a company includes a reference to securities issued by a company. For these purposes, the question whether any person is connected with another is determined in accordance with the provisions of the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258): Finance Act 2000 s 119(8), (9). Where an instrument is potentially dutiable under s 118 and these provisions, the latter prevails (but only if its effect would be to increase the amount of stamp duty payable): s 119(5), (6).

For provisions similar to those set out in s 119 which relate to leases granted to connected companies see s 121.

Where an instrument transferring marketable securities would not otherwise be treated as a transfer on sale, but the transfer is for consideration which is or includes any qualifying property (ie any debt due, stock or securities to the extent that none is a chargeable security within the Finance Act 1986 Pt IV (ss 86-99: see PARA 1124)) ('the other property'), the instrument is taken to be a transfer on sale of those securities: Finance Act 2000 s 122(1), (2), (6). If the amount or value of the consideration for that transfer would otherwise exceed the market value of the marketable securities immediately before the execution of the instrument transferring them, the amount or

value of the consideration is taken to be equal to that market value (ie the price which they might reasonably be expected to fetch on a sale at that time in the open market): s 122(3). This provision has effect even though the transfer of the marketable securities is the whole or part of the consideration for a sale of the other property, or the transaction is by way of exchange; and does not affect any charge to stamp duty in respect of the same or any other instrument so far as it relates to the transfer of the other property: s 122(4), (5).

TEXT AND NOTES 1-6--Stamp Act 1891 s 54 replaced by the Finance Act 1999 Sch 13 para 1(2). The original provision continues to apply in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1031. Meaning of 'sale'.

**1031. Meaning of 'sale'.**

The word 'sale' connotes a price in money paid or promised[1]. However, a part exchange may be characterised as a sale where the transaction takes the form of a sale of property for a total price in money, agreed between the parties, which is to be satisfied in part by the transfer of the purchaser's property, provided that the balance paid by the purchaser is not merely a nominal amount[2]. There are specific provisions which direct that a conveyance in exchange for foreign currency[3], stocks or shares, securities[4], or the satisfaction or assumption of debts[5] is to be treated as a sale and is liable to ad valorem duty as a conveyance on sale. Similarly, where the consideration for a conveyance of an interest in land or the grant of a lease is property by reference to which duty would not otherwise be payable under the conveyance on sale head of charge[6], stamp duty is imposed under that head by reference to the value of the consideration property[7]. These provisions represent a statutory extension of the concept of sale and an instrument which effects an exchange of property to which they do not apply is chargeable with fixed duty of 50 pence, rather than with ad valorem conveyance on sale duty[8]. Nevertheless, it is the true legal effect of the instrument which determines whether the instrument falls into a particular category which attracts a charge[9] and, where mutual sales of property are completed by an instrument described as an exchange which vests the properties in the respective parties, the instrument will constitute two conveyances on sale and will be chargeable on the aggregate consideration, and not merely by reference to any consideration paid for equality[10].

A sale also connotes mutual assent[11]. It appears, however, that this element may be provided or displaced by statute[12]. Where the vesting of land is obtained by the execution of a deed poll by an authority acquiring the land under statute, the vesting deed must be stamped with the same duty as would have been payable on a conveyance on sale[13].

An instrument which effects the partition or division of real property is not chargeable under the conveyance on sale head of charge unless the amount or value of the consideration paid or given for equality exceeds £100 and is then only chargeable by reference to the consideration given for equality[14].

1 *Simpson v Connolly* [1953] 2 All ER 474, [1953] 1 WLR 911; *Robshaw Bros Ltd v Mayer* [1957] Ch 125, [1956] 3 All ER 833; *Littlewoods Mail Order Stores Ltd v IRC* [1961] Ch 210, [1961] 1 All ER 195 (affd [1961] Ch 597, [1961] 3 All ER 258, CA; [1963] AC 135, [1962] 2 All ER 279, HL).

2 *Simpson v Connolly* [1953] 2 All ER 474, [1953] 1 WLR 911; and see *Connell Estate Agents v Begej* [1993] 2 EGLR 35, CA.

3 See PARA 1043 post.

4 See PARA 1044 post.

5 See PARA 1046 post.

6 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

7 See PARA 1045 post. As specific provision is made in respect of a partition or division of real property by virtue of which ad valorem duty under the conveyance on sale head of charge is to be calculated by reference

only to the consideration (if any) given for equality, it would appear that an instrument which effects a partition or division of land is not chargeable on this basis: see the text and note 11 infra.

8 *Littlewoods Mail Order Stores Ltd v IRC* [1963] AC 135, [1962] 2 All ER 279, HL. As to the fixed duty of 50p on conveyances other than on sale see PARA 1077 post. For cases concerning the distinction between sale and exchange in the context of the dissolution of a partnership see *MacLeod v IRC* (1885) 12 R 1045; *Potter v IRC* (1854) 10 Exch 147 (transfer of property by retiring to continuing partners); *Christie v IRC* (1866) LR 2 Exch 46; and *Garnett v IRC* (1899) 81 LT 633, DC (document held to be a release by retiring partner) (doubted in *Fleetwood-Hesketh v IRC* [1936] 1 KB 351 at 357-358). As to dispositions by personal representatives see *Cormack's Trustees v IRC* 1924 SC 819 (acceptance of annuity in satisfaction of rights in estate held not to be a sale). See also *Denn d Manifold v Diamond* (1825) 4 B & C 243; and contrast *Marquess of Bristol v IRC* [1901] 2 KB 336, DC, where deeds of family arrangements were held to be conveyances on sale; *Fleetwood-Hesketh v IRC* supra; and *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL. Conveyance on sale duty has been held to be chargeable in relation to an assent by personal representatives to give effect to an appropriation made with the beneficiaries' consent in satisfaction of the whole or part of a pecuniary legacy (*Dawson v IRC* [1905] 2 IR 69); and to a fixed sum payable on intestacy (*Jopling v IRC* [1940] 2 KB 282, [1940] 3 All ER 279); and to an assent vesting property in a purchaser from the deceased (*GHR Co Ltd v IRC* [1943] KB 303, [1943] 1 All ER 424). As to the exemptions which apply to ad valorem duty on dispositions by personal representatives see PARA 1089 post.

As to the stamp duty on assents and appropriations see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 571, 582. As to vesting assents see SETTLEMENTS vol 42 (Reissue) PARA 623.

9 See PARA 1011 ante.

10 *Viscount Portman v IRC* (1956) 35 ATC 349, distinguished in *Littlewoods Mail Order Stores Ltd v IRC* [1961] Ch 210, [1961] 1 All ER 195 (affd [1961] Ch 597, [1961] 3 All ER 258, CA; [1963] AC 135, [1962] 2 All ER 279, HL).

11 *Littlewoods Mail Order Stores Ltd v IRC* [1963] AC 135, [1962] 2 All ER 279, HL.

12 *A-G v Felixstowe Gas Light Co* [1907] 2 KB 984. The principle is apparently not affected, in the case of stamp duty, by *Kirkness (Inspector of Taxes) v John Hudson & Co Ltd* [1955] AC 696, [1955] 2 All ER 345, HL, applied in *Ridge Nominees Ltd v IRC* [1962] Ch 376 at 391, [1961] 3 All ER 1108, CA, where a compulsory transfer of stock pursuant to the Companies Act 1948 s 209 (repealed: see now the Companies Act 1985 ss 428-430F (as substituted and added) and COMPANIES vol 15 (2009) PARA 1511 et seq) was held to be a transfer on sale.

13 See the Lands Clauses Consolidation Act 1845 ss 75, 77 (as amended); the Compulsory Purchase Act 1965 s 28(2); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 663.

14 See the Stamp Act 1891 s 73 (amended by the Finance Act 1994 ss 241(3), (4), (6), 258, Sch 26 Pt VII); and PARA 1080 post.

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

100 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

101 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

102 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a

person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1032. Meaning of 'property'.**

'Property' is that which belongs to a person exclusively of others, and can be the subject of bargain and sale[1]. It includes goodwill[2], trade marks[3], licences to use a patent[4], book debts[5], options to purchase[6] and other rights under a contract[7]. A revocable licence is not property[8]. An owner of unworked minerals who gives an undertaking to the surface owner not to work them does not thereby convey property[9], and a grant of a purported exclusive right to carry on a certain business in an area when the grantor has no such right is not a conveyance of property[10].

1 *Potter v IRC* (1854) 10 Exch 147 at 156.

2 *Benjamin Brooke & Co Ltd v IRC* [1896] 2 QB 356, DC; *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 223, 234-235, HL. A covenant from the seller of business assets to the purchaser not to complete may constitute a conveyance of goodwill: *Eastern National Omnibus Co Ltd v IRC* [1939] 1 KB 161, [1938] 3 All ER 526.

3 *Benjamin Brooke & Co Ltd v IRC* [1896] 2 QB 356, DC.

4 *Smelting Co of Australia Ltd v IRC* [1897] 1 QB 175, CA.

5 *Measures Bros Ltd v IRC* (1900) 82 LT 689, DC.

6 *IRC v Muller & Co's Margarine Ltd* [1901] AC 217, HL; *George Wimpey & Co Ltd v IRC* [1975] 2 All ER 45, [1975] 1 WLR 995, CA.

7 *Drages Ltd v IRC* (1927) 6 ATC 727; reported in 46 TC 389n (rights under hire purchase agreements); *Western Abyssinian Mining Syndicate Ltd v IRC* (1935) 14 ATC 286 (right to call for the transfer of a mining concession).

8 *River Thames Conservators v IRC* (1886) 18 QBD 279, DC.

9 *Great Northern Rly Co v IRC* [1901] 1 KB 416 at 427, CA. See also PARA 1042 note 3 post.

10 *Limmer Asphalte Paving Co Ltd v IRC* (1872) LR 7 Exch 211.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject

matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

103 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

104 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

105 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1033. Property passing by the conveyance.

**1033. Property passing by the conveyance.**

A conveyance on sale attracts stamp duty on the consideration applicable to all property sold which in fact passes by the conveyance, even though not specifically mentioned.

A conveyance of land is deemed to include all appurtenances[1]. Growing crops, of whatever nature, pass unless expressly excluded[2], and if they are taken at a valuation and conveyed by the conveyance the valuation determines the amount of the duty. If, however, chattels are excluded and pass by delivery, the subsequent receipt for their sale does not attract ad valorem duty. Goodwill attached to premises passes with them unless expressly excluded[3].

1 See the Law of Property Act 1925 s 62; DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 236; and EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 57.

2 See *Saunders (Inspector of Taxes) v Pilcher, IRC v Pilcher* [1949] 2 All ER 1097 at 1105, CA.

3 *Potter v IRC* (1854) 10 Exch 147; *Re Kitchin, ex p Punnett* (1880) 16 Ch D 226, CA. The goodwill of a hotel is not necessarily attached to the premises: *West London Syndicate Ltd v IRC* [1898] 2 QB 507, CA; see PARA 1040 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

106 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the

consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

107 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

108 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1034. Consideration for the sale.

**1034. Consideration for the sale.**

Ad valorem duty on a conveyance on sale is imposed by reference to the amount or value of the consideration for the sale[1]. In order to ascertain the consideration for the sale, regard may be had to all the circumstances which exist when the instrument is executed, and not merely to the consideration stated in the instrument[2]. Where an agreement was entered into for the sale of property to a company for consideration which included the issue to the vendor of all the company's authorised capital, and the agreement was carried out by a conveyance of the property expressed to be in consideration of a small cash payment only, duty was held to be chargeable on the value of the property conveyed which would be reflected in the real value of the shares, even though it many times exceeded their nominal value[3]. Where the life tenant of settled shares agreed orally with the reversioner to exchange other shares owned by her for his reversionary interest in the settled shares, and the transaction, so far as it related to the settled shares, was completed by a transfer of those shares by the trustees of the settlement to the life tenant for a nominal consideration, the transfer was held liable to ad valorem duty on the value of the shares received by the reversioner from the life tenant by way of exchange under the agreement[4].

Where, on a compulsory sale, compensation is expressed to be paid for loss of business it is included in the consideration for stamp purposes[5].

A conveyance on sale of a building plot may present difficulties of assessment where a building has been erected by the time the conveyance is executed. Where the builder is the vendor but the building contract is expressed to be conditional on the completion of the purchase of the site, the consideration paid for the building (as distinct from the site) does not attract duty, even though the builder may have begun to build before completion[6]. Similarly, if a vendor agrees to sell land and simultaneously enters into a development agreement in respect of the land, but the land is transferred immediately to the purchaser, so that the contract for the sale of the land is completed independently of the development agreement, the transfer is chargeable only by reference to the consideration for the land notwithstanding that the agreement for the sale of the land and the development agreement form part of the same transaction[7]. If the builder is not also the vendor, the consideration paid for the building does not attract conveyance duty[8] even where the landowner and the builder habitually act together[9]. If however, there is in substance a contract to purchase the plot with the building on it (even though the contract is constituted by separate documents), the consideration for the building attracts duty[10].

The consideration for the sale of land is the total amount the purchaser has to pay to obtain title, including any value added tax[11].

Consideration is ascertained for the purpose of the charge if a figure is agreed between the parties, or can be quantified by reference to a formula set out in the instrument, at the time the instrument is executed, even thought the liability to pay or the amount payable may be subject to specified contingencies[12]. If the consideration for the sale of an interest in land or the grant of a lease cannot be ascertained at the time the instrument is executed[13], duty is charged by reference to the market value of the land transferred or the market value of the lease, as the case may be[14].

A conveyance on sale made for any consideration in respect of which it is chargeable with ad valorem duty and in further consideration of the purchaser's covenant to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject matter of the conveyance, is not chargeable, and is deemed not to have been chargeable, with any duty in respect of the further consideration[15].

Where a global price is paid or promised for property, some of which attracts a charge and some of which does not[16], it seems that the consideration must be apportioned for stamp duty purposes[17]. A sum payable only on breach of a term of the contract is not consideration for the sale[18].

1 See the Finance Act 1963 s 55 (as amended); and PARA 1027 ante.

2 See PARA 1012 note 3 ante. As to the effect of a false apportionment of the value of a house and chattels upon a subsequent claim for fraudulent misrepresentation see *Saunders v Edwards* [1987] 2 All ER 651, [1987] 1 WLR 1116, CA.

3 *Carlyon Estate Ltd v IRC* (1937) 16 ATC 339: see PARA 1044 post.

4 *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL. See also PARAS 1030-1031 post.

5 *IRC v Glasgow and South Western Rly Co* (1887) 12 App Cas 315, HL.

6 *Kimbers & Co v IRC* [1936] 1 KB 132.

7 *Prudential Assurance Co v IRC* [1993] 1 WLR 211, [1992] STC 863; and see Inland Revenue Statement of Practice SP8/93, 12 July 1993 (stamp duty; new buildings; issued in the light of *Prudential Assurance Co Ltd v IRC* supra).

8 *Paul v IRC* 1936 SC 443; *Blair v IRC* 1936 SC 443.

9 *Span v IRC* 1936 SC 443.

10 *M'Innes v IRC* 1934 SC 424, where at the date of the original offer of the plot the purchaser commissioned a company controlled by the landowner to erect on it a building which was completed before the execution of the conveyance.

11 *Glenrothes Development Corpn v IRC* [1994] STC 74. Stamp duty does not, however, form part of the consideration for VAT purposes: see Inland Revenue Statement of Practice SP11/91, 12 September 1991 (interaction between stamp duty and VAT) PARA 14.

12 See PARA 1019 ante.

13 The liability of an instrument to stamp duty arises when the instrument is executed and depends upon the circumstances which exist at that time: see PARA 1010 ante.

14 See PARAS 1047, 1063 post.

15 Finance Act 1900 s 10, which was held to apply in *Kimbers & Co v IRC* [1936] 1 KB 132 (cited in note 6 supra), but not in *M'Innes v IRC* 1934 SC 424 (cited in note 10 supra).

16 Eg under the Stamp Act 1891 s 59(1) (as amended): see PARA 1040 post. This approach may also be required under the Finance Act 1994 s 241: see PARA 1045 post.

17 *Drages Ltd v IRC* (1927) 6 ATC 727; reported in 46 TC 389n. See also PARAS 1015 ante, 1040 note 15 post. Cf *Guinness plc v IRC* [1994] STC 86.

18 *Western United Investment Co Ltd v IRC* [1958] Ch 392, [1958] 1 All ER 257.

## UPDATE

## 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

109 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

110 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$MV - SL$

111 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1034 Consideration for the sale**

TEXT AND NOTES--For the consideration payable in accordance with certain instruments treated as conveyances or transfers on sale see PARA 1030.

TEXT AND NOTE 1--Finance Act 1963 s 55 repealed, except in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 Sch 20 Pt V(2).

NOTE 7--Inland Revenue Statement of Practice SP8/93 continues to apply for stamp duty land tax purposes: Inland Revenue press release 5 April 2004.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1035. Consideration by way of periodical payments.

**1035. Consideration by way of periodical payments.**

Where the consideration for a conveyance on sale, or any part of it, consists of money[1] payable periodically for a definite period not exceeding 20 years, so that the total amount payable can be previously ascertained, ad valorem stamp duty is charged on the total amount[2]. Where the periodical payments are to extend for a definite period exceeding 20 years or in perpetuity, or for an indefinite period not terminable with life, the conveyance is charged with ad valorem duty calculated on the total amount which will or may, according to the terms of sale, become payable during the period of 20 years next after the date of the instrument[3]. An undertaking by a company to pay out of its net profits for an indefinite period a sum equal to 3 per cent of its paid-up capital for the time being was held to attract duty on 20 times 3 per cent of the paid-up capital at the date of the conveyance[4]. Instalments which, if earlier instalments are duly paid, will not become payable until after 20 years from the date of the instrument are not to be treated as included in the total amount which may become payable during the 20 years merely because of the existence of a provision by which the whole of the instalments are to become payable on default in paying any instalment in due time[5]. Where the money is payable periodically during any life or lives, ad valorem duty is charged on the amount which will or may, according to the terms of the sale, become payable during a period of 12 years next after the date of the instrument[6].

The statutory provisions in relation to periodical payments apply to the consideration for the sale and not to periodical payments inherent in the nature of the property sold, and so, in the case of the assignment of a lease, the rent under the lease is not part of the consideration for the assignment[7]. The effect of these provisions is to limit the duty chargeable on the instrument, as duty would otherwise be calculated by reference to the total price payable regardless of the time between the date of execution and payment[8].

1 For the meaning of 'money' see PARA 1021 note 7 ante.

2 Stamp Act 1891 s 56(1).

3 Ibid s 56(2). What s 56(2) envisages is a case where sums of money, which need not be of precisely the same amount, are payable at recurrent intervals, which need not be of precisely the same duration, and more than one of which would occur during the 20 years next following the date of the instrument: *Blendett Ltd v IRC, Quietlece v IRC* [1983] STC 17; affd [1984] STC 95, CA. For the meaning of 'instrument' see PARA 1001 ante.

4 *Underground Electric Rlys Co of London Ltd v IRC* [1906] AC 21, HL. Cf *Independent Television Authority and Associated Rediffusion Ltd v IRC* [1961] AC 427, [1960] 2 All ER 481, HL.

5 *Western United Investment Co Ltd v IRC* [1958] Ch 392, [1958] 1 All ER 257.

6 Stamp Act 1891 s 56(3).

7 *Swayne v IRC* [1899] 1 QB 335 at 344 (affd [1900] 1 QB 172, CA) (a decision under the Stamp Act 1891 s 57 (see PARA 1046 post)); *Littlewoods Mail Order Stores Ltd v IRC* [1963] AC 135, [1962] 2 All ER 279, HL.

8 Cf *Hotung v Collector of Stamp Revenue* [1965] AC 766, [1965] 2 WLR 546, PC; and see *Blendett Ltd v IRC, Quietlece v IRC* [1983] STC 17 at 23; affd [1984] STC 95 at 98, CA.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

112 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

113 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2)

Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

114 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1035 Consideration by way of periodical payments**

NOTE 3--See *Keston v IRC* [2004] EWHC 59 (Ch), [2004] STC 902,

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1036. Conveyance of separate parts of the property by different instruments.

**1036. Conveyance of separate parts of the property by different instruments.**

Where property contracted to be sold for one consideration is conveyed to the purchaser in separate parts by different instruments[1], the consideration is to be apportioned as the parties think fit, but a distinct consideration for each separate part must be set forth in each instrument, and ad valorem stamp duty is chargeable in respect of each conveyance accordingly[2].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 Stamp Act 1891 s 58(1). Each conveyance would therefore constitute part of a larger transaction within the Finance Act 1958 s 34(4) (as prospectively amended): see PARA 1028 ante. The Stamp Act 1891 s 58(1) is prospectively amended by the Finance Act 1991 s 112(1), (2), as from the abolition day, where part of the property referred to is exempt property (ie within the meaning of s 110 (see PARA 1006 note 5 ante): s 112(6)), so as to substitute for the words 'the parties think fit' the words 'is just and reasonable'. 'The abolition day' has the same meaning as in s 110 (ie the day to be appointed by the Treasury by statutory instrument under the Finance Act 1990 s 111(1)): Finance Act 1991 s 112(9). At the date at which this volume states the law, no such day had been appointed. In a case where s 112(2) or (4) (see PARAS 1036-1037 post) is to apply and the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty will have effect as if (1) the consideration had been apportioned in a manner that is just and reasonable; and (2) the amount of any distinct consideration set forth in any conveyance relating to a separate part or parcel of property were such amount as is found by a just and reasonable apportionment, and not the amount actually set forth: s 112(5). Section 112 is to apply where the contract concerned is made on or after the abolition day: s 112(8).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

115 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an

interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

116 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

117 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning

given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1036 Conveyance of separate parts of the property by different instruments**

TEXT AND NOTES--For the application of these provisions where the property transferred is or includes intellectual property see PARA 1096A.

Where part of the property in question consists of goodwill, the Stamp Act 1891 s 58(1) has effect as if 'the parties think fit' read 'is just and reasonable': Finance Act 2002 s 116(2), Sch 37 para 2(1). Where this provision applies and the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty have effect as if (1) that consideration had been so apportioned, and (2) the amount of any distinct consideration set forth in any conveyance relating to a separate part or parcel of property were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth): Sch 37 para 2(3). The 'enactments relating to stamp duty' means the Stamp Act 1891 and any enactment amending that Act or that is to be construed as one with that Act: Finance Act 2002 Sch 37 para 5.

Where any part or parcel of the property concerned consists of an estate or interest in land situated wholly or partly in a disadvantaged area (see PARA 1027), the Stamp Act 1891 s 58(1) has effect with the substitution of 'is just and reasonable' for 'the parties think fit'; and of 'such conveyance is (subject to the Finance Act 2001 s 92, Sch 30)' for 'such conveyance is': s 92(6), Sch 30 para 2(1). In a case where this provision applies and the consideration is apportioned in manner which is not just and reasonable, the enactments relating to stamp duty have effect as if the consideration had been apportioned in a manner that is just and reasonable, and the amount of any distinct consideration set forth in any conveyance relating to a separate part or parcel of property were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth): Sch 30 para 2(4). 'The enactments relating to stamp duty' means the Stamp Act 1891 (as amended) and any enactment amending, or which is to be construed as one with, that Act: Finance Act 2001 Sch 30 para 2(6).

Where property referred to in the Stamp Act 1891 s 58(1) consists of stock or marketable securities, that provision has effect as if 'the parties think fit' read 'is just and reasonable': Finance Act 2003 s 125, Sch 20 para 2(1). If the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty have effect as if the consideration had been apportioned in a manner that is just and reasonable, and as if the amount of any distinct consideration set forth in any transfer relating to a part of the property transferred were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth): Sch 20 para 2(1), (3). For this purpose 'stock or marketable securities' includes any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(3) (Sch 15 para 31 substituted by the Finance Act 2004 Sch 41 para 3).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1037. Conveyance of separate parts of the property to several persons.

**1037. Conveyance of separate parts of the property to several persons.**

Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed by separate instruments[1] in separate parts and for distinct parts of the consideration to the persons by or for whom it was purchased, the conveyance or each separate part is charged with ad valorem stamp duty in respect of the distinct part of the consideration specified in it[2].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 Stamp Act 1891 s 58(2). The Stamp Act 1891 s 58(2) is prospectively amended by the Finance Act 1991 s 112(3), (4), as from the abolition day, where part of the property referred to is exempt property (ie within the meaning of s 110 (see PARA 1006 note 5 ante) and both or all the relevant persons are connected with one another. In such a case the Stamp Act 1891 s 58(2) is to have effect as if the words from 'for distinct parts of the consideration' to the end of the subsection read 'the consideration is to be apportioned in such manner as is just and reasonable, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with ad valorem duty in respect of such distinct consideration': Finance Act 1991 s 112(4). A person is a relevant person for these purposes if he is a person by or for whom the property is contracted to be purchased and the question whether persons are connected with one another is to be determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258): Finance Act 1991 s 112(7). Section 112 is to apply where the contract concerned is made on or after the abolition day: s 112(8). For the meaning of 'the abolition day' see PARA 1036 note 2 ante. See also s 112(5) cited in PARA 1036 note 2 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

118 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an

interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

119 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

120 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning

given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1037 Conveyance of separate parts of the property to several persons

TEXT AND NOTES--For the application of these provisions where the property transferred is or includes intellectual property see PARA 1096A.

Where part of the property in question consists of goodwill, and both or (as the case may be) all the relevant persons are connected with one another, the Stamp Act 1891 s 58(2) has effect as if the words 'for distinct parts of the consideration ... specified in it' read 'the consideration is to be apportioned in such manner as is just and reasonable, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged to ad valorem duty in respect of such distinct consideration': Finance Act 2002 s 116(2), Sch 37 para 2(2). A person is a 'relevant person' if he is a person by or for whom the property is contracted to be purchased, and the question whether persons are connected with one another is to be determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION): Finance Act 2002 Sch 37 para 2(4). Where this provision applies and the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty have effect as if (1) that consideration had been so apportioned, and (2) the amount of any distinct consideration set forth in any conveyance relating to a separate part or parcel of property were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth): Finance Act 2002 Sch 37 para 2(3). The 'enactments relating to stamp duty' means the Stamp Act 1891 and any enactment amending that Act or that is to be construed as one with that Act: Finance Act 2002 Sch 37 para 5.

Where any part or parcel of the property referred to in the Stamp Act 1891 s 58(2) consists of an estate or interest in land situated wholly or partly in a disadvantaged area (see PARA 1027), and both or (as the case may be) all the relevant persons are connected with one another, s 58(2) has effect as if the words 'for distinct parts of the consideration ... specified in it' read 'the consideration is to be apportioned in such manner as is just and reasonable, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is (subject to the Finance Act 2001 s 92, Sch 30) to be charged with ad valorem duty in respect of such distinct consideration': s 92(6), Sch 30 para 2(2), (3). For this purpose, a person is a relevant person if he is a person by or for whom the property is contracted to be purchased; and the question whether persons are connected with one another is to be determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION): Finance Act 2001 Sch 30 para 2(5). For the position where the apportionment is made otherwise than on a just and reasonable basis, see PARA 1036.

Where part of the property referred to in the Stamp Act 1891 s 58(2) consists of stock or marketable securities, and both or (as the case may be) all the relevant persons are connected with one another, s 58(2) has effect as if 'for distinct parts of the consideration ... specified in it' read 'the consideration is to be apportioned in such manner as is just and reasonable, so that a distinct consideration for each part of the property transferred is set forth in the transfer relating to that part, and the transfer must be charged with ad valorem duty in respect of that consideration': Finance Act 2003 s 125, Sch 20 para 2(2). If the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty have effect as if the consideration had been apportioned in a manner that is just and reasonable, and as if

the amount of any distinct consideration set forth in any transfer relating to a part of the property transferred were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth): Sch 20 para 2(1), (3). For this purpose 'stock or marketable securities' includes any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(3) (Sch 15 para 31 substituted by the Finance Act 2004 Sch 41 para 3). A person is a 'relevant person' if he is a person by or for whom the property is contracted to be purchased, and the question whether persons are connected with one another is determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION): Finance Act 2003 Sch 20 para 2(4).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/A. CONVEYANCE ON SALE/1038. Several instruments completing the title.

**1038. Several instruments completing the title.**

Where there are several instruments[1] of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance alone is chargeable with ad valorem stamp duty, the other instruments being respectively charged with the appropriate duty for which they may be liable, not exceeding the ad valorem duty payable in respect of the principal instrument[2]. The parties may determine for themselves which is the principal instrument and may pay the ad valorem duty on that accordingly[3].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 Stamp Act 1891 s 58(3).

3 Ibid s 61(2). It had been held that a conveyance confirming a duly stamped conveyance which for some reason was inoperative was not the principal instrument (*Doe d Priest v Weston* (1841) 2 QB 249); but the Stamp Duties Management Act 1891 s 9(7) may suggest that the appropriate remedy is an application for allowance: see PARA 1107 note 1 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

121 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual

consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

122 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

123 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1039. Conveyance to sub-purchaser.**

Where a person who has contracted for the purchase of any property but has not obtained a conveyance of it contracts to sell the same property[1] to another person, and the property is in consequence conveyed immediately to the sub-purchaser, the ad valorem stamp duty payable is calculated in respect of the consideration moving from the sub-purchaser[2]. There is an exception to inhibit avoidance of duty by means of a sub-sale[3].

Similarly, where a person who has contracted for the purchase of any property but has not obtained a conveyance of it contracts to sell the whole or any part or parts of it to any other person or persons and the property is in consequence conveyed by the original vendor to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with ad valorem duty in respect only of the consideration moving from the sub-purchaser, without regard to the amount or value of the original consideration[4]. Again, there is an exception to inhibit avoidance[5].

Where, however, the original purchaser takes a conveyance of part of the property, it has to be stamped by reference to the proportion of the original purchase price which the value of that part bears to the total value[6]. Where a sub-purchaser takes an actual conveyance of the interest of his immediate vendor which is chargeable with ad valorem duty on the consideration moving from him and is duly stamped accordingly[7], any subsequent conveyance of the same property made to him by the original vendor is charged with a duty of 50 pence, or ad valorem duty if less than 50 pence[8].

1 The Stamp Act 1891 s 58(4) does not apply where steps are taken to reduce the value of the shares drastically after their acquisition by the first purchaser but before conveyance to the sub-purchaser, the property being regarded as different from that contracted for by the first purchaser: see *Fitch Lovell Ltd v IRC* [1962] 3 All ER 685, [1962] 1 WLR 1325.

2 Stamp Act 1891 s 58(4).

3 Ibid s 58(4) does not apply where (1) the chargeable consideration moving from the sub-purchaser is less than the value of the property immediately before the contract of sale to him; and (2) the conveyance falls outside the ambit of the Finance Act 1981 s 107 (as amended) (sale of houses at discount by local authorities and other bodies: see PARA 1053 post): Stamp Act 1891 s 58(4) (amended for these purposes by the Finance Act 1984 s 112(1)). Any reference in the Stamp Act 1891 s 58(4) (as so amended) or s 58(5) (as amended: see note 5 infra) to chargeable consideration is a reference to consideration which falls to be brought into account in determining the duty, if any, chargeable on the conveyance to the sub-purchaser, or on the conveyance of each of the parts or parcels in question; and in any case where it is necessary to determine the value at any time of any property, the value is taken to be the price which the property might reasonably be expected to fetch on a sale at that time in the open market: Stamp Act 1891 s 58(7) (added by the Finance Act 1984 s 112(3); amended by the Finance Act 1985 s 82(2), (6)).

4 Stamp Act 1891 s 58(5).

5 Ibid s 58(5) does not apply where the aggregate of the chargeable consideration for the sale of all parts and parcels is less than the value of the whole property immediately before the contract for their sale or, as the case may be, the first contract for the sale of any of them: s 58(5) (amended for these purposes by the Finance Act 1984 s 112(2)). As to the chargeable consideration see note 3 supra.

6 *Maples v IRC* [1914] 3 KB 303, where the original purchase was for £45,000 plus an assumption of liability for £997. There were sub-sales of portions of the property for a total consideration exceeding £45,000, with conveyances direct by the vendor to the sub-purchasers and a conveyance of the remainder of the property by

the vendor to the original purchaser, who covenanted to assume liability for the £997. Duty was chargeable not on the £997 but on so much of £45,997 as was apportionable to the property conveyed to the original purchaser.

7 For the meaning of 'duly stamped' see PARA 1007 note 9 ante.

8 Stamp Act 1891 s 58(6), which refers to 'such other duty as it may be liable to', namely the duty of 50p under s 1, Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described': see PARA 1077 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

124 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

125 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of

the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

126 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1039 Conveyance to sub-purchaser**

NOTES 1-3--See *Keston v IRC* [2004] EWHC 59 (Ch), [2004] STC 902.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/B. AGREEMENTS CHARGEABLE AS A CONVEYANCE ON SALE/1040. Contracts for the sale of certain property.

## *B. AGREEMENTS CHARGEABLE AS A CONVEYANCE ON SALE*

### 1040. Contracts for the sale of certain property.

Any contract or agreement[1]:

42 (1) for the sale of any equitable estate or interest in any property[2] whatsoever[3]; or

43 (2) for the sale of any estate or interest in any property except (a) land, tenements or hereditaments; or (b) property locally situate out of the United Kingdom[4]; or (c) goods, wares or merchandise[5]; or (d) stock[6] or marketable securities[7]; or (e) any ship or vessel[8] or part interest, share or property of or in any ship or vessel,

is charged with the same ad valorem stamp duty, payable by the purchaser, as if it were an actual conveyance on sale of the thing agreed to be sold[9].

The exceptions to the charge to duty under head (2) above do not apply where the sale is of an equitable estate or interest in property and so within head (1) above[10]. An agreement to sell a lease containing an option for the purchaser to require a declaration of trust in the event of the landlord's refusal of consent to assign is not an agreement for the sale of an equitable interest within head (1) above[11]. An agreement to surrender a lease may, however, be chargeable as a conveyance on sale[12]. A hotel proprietor's goodwill is not necessarily an interest in land so as to come within the exceptions to the charge[13], but goodwill of a business carried on abroad is property locally situate out of the United Kingdom for the purpose of these exceptions[14]. Where business assets are sold and consideration is received for an agreement not to compete, there may be a sale of goodwill even though it is not expressly sold[15].

An agreement to sell a business (including book debts) as from an antecedent date attracts duty on the consideration for the book debts, even if they have been discharged at the date the agreement is executed[16].

1 Although 'agreement' apparently includes a memorandum of an agreement (*Fleetwood-Hesketh v IRC*[1936] 1 KB 351 at 366), certain formalities are required for a valid agreement for the disposition of an interest in land: see the Law of Property (Miscellaneous Provisions) Act 1989 s 2; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 79.

2 For the meaning of 'property' see PARA 1032 ante.

3 See *Chesterfield Brewery Co v IRC*[1899] 2 QB 7 at 13, DC.

4 As to the locality of property cf CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 15; INHERITANCE TAXATION vol 24 (Reissue) PARA 597 et seq. For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

5 For the meaning of 'goods' cf SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 30, 34, 485. Electricity is treated as goods for these purposes: see the Electricity Act 1989 s 103.

6 For the meaning of 'stock', which includes units under a unit trust scheme, see PARA 1029 note 4 ante. This reference to a contract or agreement for the sale of stock is prospectively repealed by the Finance Act 1990 s

132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

7 For the meaning of 'marketable security' see PARA 1029 note 5 ante. This reference to a contract or agreement for the sale of marketable securities is prospectively repealed by ibid Sch 19 Pt VI as from the abolition day.

8 For the meaning of 'ship' and 'vessel' cf the Merchant Shipping Act 1894 s 742. See also PARA 1105 post. Section 742 is prospectively repealed by the Merchant Shipping Act 1995 s 314(1), Sch 12, as from 1 January 1996 (s 316(2)); and replaced by s 313 thereof.

9 Stamp Act 1891 s 59(1) (amended by the Revenue Act 1909 s 12(2), Schedule), enacted in response to *IRC v G Angus & Co*(1889) 23 QBD 579, CA. As to the duty applicable to a conveyance on sale see PARA 1027 ante.

10 *Farmer & Co Ltd v IRC*[1898] 2 QB 141, DC.

11 *West London Syndicate Ltd v IRC*[1898] 2 QB 507, CA. An agreement granting for a consideration an option to purchase land is itself a conveyance on sale of property within the Stamp Act 1891 s 54 (see PARA 1030 ante), and accordingly attracts ad valorem duty as such: see *George Wimpey & Co Ltd v IRC*[1975] 2 All ER 45, [1975] 1 WLR 995, CA.

12 See PARA 1064 post.

13 *West London Syndicate Ltd v IRC*[1898] 2 QB 507, CA.

14 *IRC v Muller & Co's Margarine Ltd*[1901] AC 217, HL. However, a business carried on from a factory abroad may have goodwill in the United Kingdom: see *Benjamin Brooke & Co Ltd v IRC*[1896] 2 QB 356, DC.

15 *Eastern National Omnibus Co Ltd v IRC*[1939] 1 KB 161, [1938] 3 All ER 526. Cf *IRC v Muller & Co's Margarine Ltd*[1901] AC 217, HL.

16 *Measures Bros Ltd v IRC* (1900) 82 LT 689, DC. Where a global price is paid for eg a business, it must be apportioned among the liable and non-liable assets: see eg *Drages Ltd v IRC* (1927) 6 ATC 727; reported in 46 TC 389n. See also PARAS 1015, 1034 ante.

## UPDATE

## 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

> 127 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was

transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

128 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

129 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

## 1040 Contracts for the sale of certain property

TEXT AND NOTES--Certain contracts for the sale of land and buildings are chargeable as conveyances: see PARA 1040A.

TEXT AND NOTES 1-9--Stamp Act 1891 s 59(1) replaced by Finance Act 1999 Sch 13 para 7(1). The original provision continues to apply in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2). For the prospective partial repeal from abolition day, see s 123(3); and PARAS 1004, 1005.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/B. AGREEMENTS CHARGEABLE AS A CONVEYANCE ON SALE/1040A. Contracts for the sale of an estate or interest in land chargeable as conveyances.

**1040A. Contracts for the sale of an estate or interest in land chargeable as conveyances.**

If a contract or agreement for the sale or an estate or interest in land in the United Kingdom[1], the amount or value of the consideration exceeds £10m, or the instrument[2] forms part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds £10m, is not otherwise chargeable to stamp duty, and a conveyance or transfer made in conformity with the contract or agreement is not presented to the Commissioners of Inland Revenue[3] for stamping with the ad valorem duty chargeable on it within the period of 90 days after the execution of the contract or agreement, or within such longer period as the Commissioners may think reasonable in the circumstances of the case, the contract or agreement is chargeable with the same ad valorem duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate or interest contracted or agreed to be sold[4]. The duty so paid must be repaid by the Commissioners if the contract or agreement is afterwards rescinded or annulled or is for any other reason not substantially performed or carried into effect[5].

Where an instrument to which these provisions apply is presented for stamping before the end of the specified period, any adjudication to the effect that stamp duty is not chargeable does not affect the operation of these provisions, and the fact that duty may be charged under these provisions may be denoted on the instrument in such manner as the Commissioners think fit[6].

Where duty has been paid under these provisions on the original sale, or on an intervening subsale[7], duty under these provisions on a subsale, or a subsequent subsale, is chargeable only in respect of the amount (if any) by which the chargeable consideration[8] on that transaction exceeds the chargeable consideration on the earlier transaction[9].

Where ad valorem duty is chargeable both under these provisions on a contract or agreement ('the original sale') and on a subsequent conveyance or transfer by the original seller to the purchaser, or a sub-purchaser, in conformity with that contract or agreement, the following provisions apply[10]:

44 (1) where the original seller conveys the whole of the property contracted to be sold to the purchaser, or to a sub-purchaser[11], the conveyance or transfer is chargeable with duty only to the extent (if any) that the ad valorem duty otherwise[12] chargeable on it exceeds the duty paid under these provisions on the original sale together with the amount of any such duty paid on an intervening subsale;

45 (2) where the original seller conveys the property contracted to be sold to different sub-purchasers in parts or parcels[13], the conveyance or transfer of each part or parcel is chargeable with duty only to the extent (if any) that the ad valorem duty otherwise[14] chargeable on it exceeds an appropriate proportion[15] of the ad valorem duty paid on the original sale together with an appropriate proportion of any such duty paid on an intervening subsale[16].

Where:

46 (a) duty is paid under these provisions on the original sale;

47 (b) one or more conveyances or transfers are executed in conformity with that contract or agreement so that the whole of the property contracted to be sold is duly conveyed to a purchaser or to one or more sub-purchasers;

48 (c) those conveyances or transfers are all duly stamped; and

49 (d) the aggregate amount of the duty that would have been paid on those conveyances or transfers but for duty having been previously paid on the original sale is less than the duty paid on the original sale,

the Commissioners must repay the difference to the person by whom the duty was paid on the original sale[17].

It is for a person claiming any relief under these provisions to prove to the satisfaction of the Commissioners that he is entitled to relief and in what amount[18].

1 For the meaning of 'United Kingdom' see PARA 1007 NOTE 6. Where a transaction relates both to land in the United Kingdom and to other property, these provisions apply as if there were separate transactions; and the reference in the TEXT to a series of transactions is to a series of transactions so far as relating to land in the United Kingdom: Finance Act 2002 s 115(7), Sch 36 para 8(1), (2). If, in a case where a transaction or series of transactions relates partly to land in the United Kingdom and partly to other property, the consideration is not apportioned in a manner that is just and reasonable, these provisions have effect as if the consideration had been so apportioned: Sch 36 para 8(3).

2 For the meaning of 'instrument' see PARA 1001 (definition applied by the Finance Act 2002 s 115(6), Sch 36 para 10).

3 As to the Commissioners of Inland Revenue see INCOME TAXATION.

4 Finance Act 2002 s 115(1), (2). The Commissioners (1) may refuse to allow a longer period unless they are provided with a copy of the contract or agreement and such other evidence as they may reasonably require as to the facts and circumstances relevant to their decision; (2) may allow a longer period subject to compliance with such conditions as they think fit; and (3) may not allow any longer period if it appears to them that the whole, or substantially the whole, of the intended consideration has been paid or transferred: s 115(3).

5 Ibid s 115(6). Any reference in these provisions to duty chargeable or paid on a transaction is to duty chargeable or paid on the stamping of the instrument by which the transaction is effected: s 115(7), Sch 36 para 7.

6 Ibid s 115(4). Where an instrument is chargeable with duty under these provisions, the Stamp Act 1891 s 14(4) (see PARA 1007) does not apply in relation to it until after the end of the specified period; and ss 15A, 15B (see PARA 1020) apply in relation to it as if it had been executed at the end of that period: Finance Act 2002 s 115(5).

7 For this purpose, there is a subsale (1) where the purchaser under a contract or agreement for the sale of an estate or interest in land in the United Kingdom ('the original sale') without having obtained a conveyance of the property contracted to be sold, contracts to sell the whole or part of the property to another person; or (2) where the sub-purchaser under a subsale of an estate or interest in land in the United Kingdom, without having obtained a conveyance of the property contracted to be sold, contracts to sell to another person the whole or part of the property contracted to be sold by the original sale, so as to entitle the person concerned to call for a conveyance from the original seller: ibid Sch 36 paras 1, 2.

8 The chargeable consideration on a transaction is the consideration that falls to be brought into account in determining the duty chargeable on it: ibid Sch 36 para 3(5). If there is more than one earlier transaction on which duty has been paid, the reference to the chargeable consideration on the earlier transaction is to be read as a reference to the higher or highest amount of chargeable consideration on which duty has been paid: Sch 36 para 3(2). If the subsale does not relate to the whole of the property to which the earlier transaction related, the reference to the chargeable consideration on an earlier transaction is to be read as a reference to an appropriate proportion of that consideration, determined on a just and reasonable basis, having regard to the subject-matter of the subsale and of the earlier transaction: Sch 36 para 3(3), (4).

9 Ibid Sch 36 para 3(1). Where under this provision duty is chargeable in respect of part only of the consideration for the subsale, it is chargeable at the rate that would be applicable if the whole of the chargeable consideration on the subsale were taken into account: Sch 36 para 3(6).

10 Ibid Sch 36 para 4(1). References to the purchaser under the original sale, or a sub-purchaser under a subsale, include a person by whom the rights of the purchaser, or a sub-purchaser, are exercisable by virtue of any assignment (or, in Scotland, assignation) or agreement (other than a subsale): Sch 35 para 4(2).

11 Ie in circumstances in which the Stamp Act 1891 s 58(4) (see PARA 1039) applies.

12 Ie apart from the Finance Act 2002 Sch 36 para 5(1).

13 Ie in circumstances in which the Stamp Act 1891 s 58(4) (see PARA 1039) applies.

14 Ie apart from the Finance Act 2002 Sch 36 para 5(2).

15 What is an appropriate proportion is to be determined on a just and reasonable basis, having regard to the subject-matter of the conveyance or transfer and of the earlier transactions: ibid Sch 36 para 5(3).

16 Ibid Sch 36 para 5(1), (2). Where these provisions apply to reduce or extinguish the duty payable on a conveyance or transfer, the Commissioners must, upon application and upon production of the earlier instrument or instruments, duly stamped, either denote the payment of the whole of the ad valorem duty upon the conveyance or transfer, or transfer to the conveyance or transfer the ad valorem duty paid on the earlier instrument or instruments: Sch 36 para 5(4).

17 Ibid Sch 36 para 6(1). If duty has been so paid on one or more intervening subsales, this provision has effect with the following modifications: (1) the reference to duty having been paid on the original sale is to be read as a reference to duty having been paid either on the original sale or on an intervening subsale; (2) the reference to the amount of duty paid on the original sale is to be read as a reference to the aggregate of the amounts paid on the original sale and any intervening subsales; and (3) any repayment must be apportioned among the persons by whom those amounts were paid on a just and reasonable basis, having regard to the subject matter of the original sale and of the subsale or subsales in question: Sch 36 para 6(2), (3).

18 Ibid Sch 36 para 9.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

130 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual

consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

131 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

132 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1041. Effect of stamping agreement.**

If, after paying the ad valorem stamp duty[1] but before having obtained a conveyance or transfer of property, the purchaser enters into a contract or agreement for the sale of the same property, the second contract or agreement is charged with ad valorem duty on any excess over the consideration for the original sale, but, if there is no excess, it is not otherwise chargeable[2]. Where duty has been paid[3], the conveyance or transfer made to the purchaser or sub-purchaser or any other person on his behalf or by his direction is not chargeable with any duty[4].

Where the contract or agreement would, apart from the provision charging contracts as conveyances on sale[5], not be chargeable with any duty, then if the conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioners of Inland Revenue for stamping ad valorem within six months after the first execution of the contract or agreement, or such longer period as the commissioners think reasonable in the circumstances, the conveyance or transfer is to be stamped accordingly and both it and the contract or agreement will be deemed duly stamped for all purposes[6].

If ad valorem duty is paid on a contract or agreement which is afterwards rescinded or annulled, or for any other reason not substantially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer, the commissioners must return the duty[7].

1 As to the charge to duty see the Stamp Act 1891 s 59(1) (as amended); and PARA 1040 ante.

2 Ibid s 59(2) (amended by the Finance Act 1970 s 32(a), Sch 7 para 1(1), (3)(b); and by the Finance Act 1985 s 98(6), Sch 27 Pt IX).

3 Ie in conformity with the Stamp Act 1891 s 59(1) or (2) (as amended).

4 Ibid s 59(3). The Commissioners of Inland Revenue upon application must either denote the payment of the ad valorem duty on the conveyance or transfer, or transfer the ad valorem duty to it upon production of the contract or agreement or the contracts or agreements duly stamped: s 59(3). For the meaning of 'duly stamped' see PARA 1007 note 9 ante.

5 Ie ibid s 59 (as amended): see the text and notes 1-4 supra, 6-7 infra; and PARA 1040 ante.

6 Ibid s 59(5) (amended by the Finance Act 1970 Sch 7 para 1(1), (3)(b); and by the Finance Act 1985 Sch 27 Pt IX). Nothing in the Stamp Act 1891 s 59(5) (as so amended) affects the provisions as to the stamping of a conveyance or transfer after execution: s 59(5). As to stamping after execution see PARAS 1020-1021 ante.

7 Ibid s 59(6).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act

2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see para 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

133 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

134 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

135 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1041 Effect of stamping agreement**

TEXT AND NOTES--Stamp Act 1891 s 59(2)-(6) replaced by Finance Act 1999 Sch 13 paras 7(2)-(4), 8, 9. The original provision continues to apply in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/B. AGREEMENTS CHARGEABLE AS A CONVEYANCE ON SALE/1042. Sale of a new right.

**1042. Sale of a new right.**

Where, upon the sale[1] of an annuity (other than a superannuation annuity or purchased life annuity[2]) or other right not before in existence[3], the right is not created by grant or conveyance but is only secured by bond, covenant[4], contract or otherwise, the bond or other instrument (or one of them if several) is charged with the same stamp duty as an actual grant or conveyance and is deemed to be a conveyance on sale[5].

A perpetual annuity given in consideration of a lump sum expressed to be 'borrowed' is within the charge[6], but a policy issued by an insurance company securing repayment of a sum with interest is not within it[7].

1 For the meaning of 'sale' see PARA 1031 ante. A grant in consideration of shares is within the charge (*Faber v IRC* [1936] 1 All ER 617: see PARA 1044 ante), but not a grant in consideration of the surrender of rights (*Cormack's Trustees v IRC* 1924 SC 819).

2 Superannuation annuities and purchased life annuities were formerly chargeable under the Stamp Act 1891 s 1, Sch 1, 'Bond, Covenant or Instrument of any kind whatsoever' para (3) (repealed). Stamp duty under this head of charge was abolished by the Finance Act 1989 s 173(1)(b) provided that, subject to the Stamp Act 1891 s 4 (separate charges on instruments containing or relating to several distinct matters: see PARA 1015 ante), an instrument which would be chargeable under this head of charge but for its abolition is not chargeable with stamp duty under any other provision of the Stamp Act 1891: Finance Act 1989 s 173(2).

3 The right must be one capable of being sold. so that a contract to perform services is not charged. Where the effect of a notice and counter-notice under the enactments regulating the working of mines near railways was that minerals could not be worked, but the railway company was liable to pay compensation to the mine owner, an agreement by the mine owner acknowledging the receipt of compensation and agreeing not to work the minerals was held not to create any right not before in existence: *Great Northern Rly Co v IRC* [1901] 1 KB 416, CA: see PARA 1032 ante; and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 157.

4 The Stamp Act 1891 s 60 refers also to warrants of attorney, but they were abolished by the Administration of Justice Act 1956 s 16 (repealed).

5 Stamp Act 1891 s 60.

6 *Mersey Docks and Harbour Board v IRC* [1897] 2 QB 316, CA.

7 *Commercial Union Assurance Co Ltd v IRC* [1938] 2 KB 551, [1937] 4 All ER 159.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or

marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

136 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

137 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

138 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/C. EXCHANGES CHARGEABLE AS A CONVEYANCE ON SALE/1043. Consideration consisting of foreign currency.

## *C. EXCHANGES CHARGEABLE AS A CONVEYANCE ON SALE*

### 1043. Consideration consisting of foreign currency.

Where an instrument[1] is chargeable with ad valorem stamp duty in respect of any money[2] in any foreign or colonial currency[3], the duty is, in general, to be calculated on the value, at the date of the instrument, of the money in British currency according to the current rate of exchange[4]. If an instrument contains a statement of the current rate of exchange and is stamped[5] accordingly, it is, as regards the subject matter of the statement, deemed duly stamped unless or until it is shown that the statement is untrue and that the instrument is in fact insufficiently stamped[6].

It has been said that foreign currency is a commodity to be valued but that, translated into English currency for the purposes of stamp duty, it becomes a price in money paid or promised with the result that the transaction is to be treated as a sale[7].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 For the meaning of 'money' see PARA 1021 note 7 ante.

3 Stamp Act 1891 s 6(1)(a).

4 Ibid s 6(1).

5 For the meaning of 'stamped' see PARA 1007 note 9 ante.

6 Stamp Act 1891 s 6(2).

7 *Littlewoods Mail Order Stores Ltd v IRC*[1963] AC 135 at 152, [1962] 2 All ER 279 at 283, HL, per Viscount Simonds. For the meaning of 'sale' see PARA 1031 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

139 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

140 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

141 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/C. EXCHANGES CHARGEABLE AS A CONVEYANCE ON SALE/1044. Consideration consisting of stock or securities.

**1044. Consideration consisting of stock or securities.**

Where the consideration or any part of the consideration for a conveyance on sale consists of any stock[1] or marketable security[2], the conveyance is as a general rule[3] charged with ad valorem stamp duty in respect of the value of the stock or security[4], the value for this purpose being the value, at the date of the conveyance, of the stock or security according to its average price[5]. Delay in taking a conveyance may thus affect the duty. Newly issued shares would not normally be valued at less than the amount credited as paid up[6], but they may well be valued at more[7]. An instrument of transfer which is given for stock or marketable securities is chargeable as a conveyance on sale notwithstanding that the instrument is described as an exchange[8].

Where the consideration or any part of it consists of a security which is not a marketable security, the conveyance is charged with ad valorem duty in respect of the amount due on the date thereof for principal and interest upon the security[9].

1 For the meaning of 'stock' see PARA 1029 note 4 ante.

2 For the meaning of 'marketable security' see PARA 1029 note 5 ante.

3 As to statutory relief from duty on company acquisitions see PARAS 1091-1092, 1097 post.

4 Stamp Act 1891 s 55(1). See also *Ulverstone and Lancaster Rly Co v IRC* (1864) 2 H & C 855; *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL (see PARA 1034 ante).

5 Stamp Act 1891 s 6(1). Where an instrument contains a statement of the average price and is stamped in accordance with that statement, it is deemed to be duly stamped unless and until it is shown that the statement is untrue and the instrument is insufficiently stamped: s 6(2); *Faber v IRC* [1936] 1 All ER 617. As to valuation where the consideration consists of shares to be issued after the conveyance see *Carlyon Estate Ltd v IRC* (1937) 16 ATC 339; reported in 46 TC 413n (see PARA 1034 ante); *Crane Fruehauf Ltd v IRC* [1975] 1 All ER 429 at 434, CA; and note 6 infra. As to unquoted securities see *Holt v IRC* [1953] 2 All ER 1499, [1953] 1 WLR 1488; and INHERITANCE TAXATION vol 24 (Reissue) PARA 621. See also *Hatrick v Comr of Inland Revenue* [1963] NZLR 641 (NZ CA), where the court considered several recognised methods of valuing securities. In order to obtain a common valuation for all Inland Revenue purposes, the Commissioners of Inland Revenue now adopt the capital gains tax basis for valuing shares: see the Taxation of Chargeable Gains Act 1992 ss 272, 273; *BTR plc v IRC* [1986] STC 433; and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 44.

6 In *John Foster & Sons v IRC* [1894] 1 QB 516, CA, duty was claimed only on £140,000, the book value of the property transferred, although the consideration for the transfer was fully paid-up shares of a nominal value of £360,000 and £240,000 debenture stock. It is, however, now settled that, where shares are issued as fully paid up as consideration on the purchase of property, the court will not normally inquire into the value received by the company: *Re Wragg Ltd* [1897] 1 Ch 818, CA. As to the issue of shares see also note 5 supra. A company must not normally allot shares at a discount: see the Companies Act 1985 s 100(1). In general a public company must not allot shares as fully or partly paid up otherwise than in cash unless the prescribed conditions are complied with: see s 103(1). These conditions require the valuation of the consideration by an independent person: see s 108(1), (2). See further COMPANIES vol 15 (2009) PARA 1122.

7 See *Carlyon Estate Ltd v IRC* (1937) 16 ATC 339; reported in 46 TC 413n; and PARA 1034 ante.

8 *J & P Coats Ltd v IRC* [1897] 2 QB 423. See also PARA 1011 ante.

9 Stamp Act 1891 s 55(2).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

142 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

143 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the

transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

144 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1044 Consideration consisting of stock or securities**

TEXT AND NOTES 1-5--For the purposes of these provisions, it is immaterial (1) whether, at the time of the execution of the conveyance on sale, the stock or marketable security is or has been issued or is to be issued; and (2) in a case where the stock or marketable security is to be issued, when it is to be, or is, issued and whether the issue is certain or contingent: Stamp Act 1891 s 55(1A) (added by the Finance Act 2000 s 126).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/C. EXCHANGES CHARGEABLE AS A CONVEYANCE ON SALE/1045. Consideration for the conveyance of an interest in land consisting of property which does not otherwise attract a charge.

**1045. Consideration for the conveyance of an interest in land consisting of property which does not otherwise attract a charge.**

Where the consideration for the transfer or vesting of any estate or interest in land[1] consists of or includes any property[2] and, for the purposes of stamp duty chargeable under the heading 'Conveyance or Transfer on Sale'[3], no amount or value is otherwise attributed to that property, then the consideration, or the consideration so far as relating to that property, is taken to be the market value[4] of the property immediately before the instrument[5] in question is executed[6] and the instrument is chargeable with ad valorem duty as a conveyance on sale[7].

This measure was intended to apply so as to impose ad valorem duty on the transfer of land in exchange for other property and to impose ad valorem duty on both transfers where land is exchanged for land[8]. As stamp duty is imposed on instruments, rather than transactions[9], the provision would seem to operate so as to impose a charge on both transfers of land unless the transaction can be characterised as a sale for a total price in money which is to be satisfied in part by the transfer of the purchaser's land[10], in which case an amount will be attributed to the purchaser's land for the purposes of the charge and, it seems, the provision will not apply. It would also seem that a partition or division of real property is not chargeable under this provision, as specific provision is made elsewhere in the legislation which limits the imposition of ad valorem duty under the conveyance on sale head of charge on such instruments to an amount calculated by reference to the consideration (if any) given for equality where that consideration exceeds £100[11].

An instrument which is expressed to be an exchange of land but which is in fact executed to complete two contracts of sale is chargeable as two conveyances on sale by reference to the aggregate consideration[12].

1 The Finance Act 1994 s 241(1) also applies to any property given in consideration for the grant of a lease: see PARA 1062 post.

2 For the meaning of 'property' see PARA 1032 ante.

3 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante. For the ad valorem duty chargeable on a conveyance on sale of land see PARA 1027 ante.

4 For these purposes, the market value of property at any time is the price which that property might reasonably be expected to fetch on a sale at that time in the open market: Finance Act 1994 s 241(2).

5 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of ibid s 257(3)).

6 For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of ibid s 257(3)).

7 Ibid s 241(1). Section 241(1) applies to instruments executed after 7 December 1993, not being instruments executed in pursuance of a contract made before 30 November 1993: s 241(6).

8 See HC Official Report, SC A, 17 March 1994, col 713 et seq. For a critical discussion of the changes made by the Finance Act 1994 s 241 see Richard Pincher, 'Stamping New Ground' 314 Tax Journal (29 June 1995) p 10 et seq. See further 322 Tax Journal (7 September 1995) pp 2-3.

9 See PARA 1010 ante.

10 See PARA 1031 ante.

11 See the Stamp Act 1891 s 73 (as amended); and PARA 1080 post.

12 See *Portman v IRC* (1956) 35 ATC 349; and PARA 1011 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

145 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

146 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net

market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

147 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1045 Consideration for the conveyance of an interest in land consisting of property which does not otherwise attract a charge**

NOTE 3--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9). These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122.

## *D. CONVEYANCE IN SATISFACTION OF A DEBT OR SUBJECT TO A LIABILITY*

### 1046. Conveyance in satisfaction of a debt or subject to a liability.

Where property is conveyed to a person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money[1] or stock[2], whether or not charged on the property, then, subject to the qualification stated below, the debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect of which the conveyance is charged with ad valorem stamp duty[3]. This provision does not apply to liabilities inherent in the nature of the property conveyed, and so, in the case of the assignment of a lease, the rent payable under the lease is not consideration for the assignment[4]. It does not apply to certain disposals of land by a local constituency association of a political party following boundary changes[5].

Where any property is conveyed to a person wholly or in part in consideration of a debt due to him[6], and the consideration in respect of which the conveyance would be chargeable with ad valorem stamp duty under the above provision[7] would exceed the value of the property conveyed[8], that consideration is treated as reduced to that value[9], but the conveyance is not to be treated as duly stamped unless it is stamped with a stamp denoting that it is not chargeable with any duty or that it is duly stamped[10].

1 For the meaning of 'money' see PARA 1021 note 7 ante.

2 For the meaning of 'stock' see PARA 1029 note 4 ante.

3 Stamp Act 1891 s 57. For examples of such conveyances see *Mortimore v IRC* (1864) 2 H & C 838 (money payable contingently); *Scottish Equitable Life Assurance Society v IRC* (1894) 22 R 85 (mortgagor's renunciation of right to redeem); *Huntington v IRC*[1896] 1 QB 422, DC (conveyance pursuant to foreclosure order). Where property subject to a mortgage is sold and the mortgage is not discharged prior to the transfer, the Stamp Act 1891 s 57 applies whether or not the purchaser assumes liability under the mortgage: *IRC v Liquidators of City of Glasgow Bank* (1881) 8 R 389, 18 SLR 242. See also Inland Revenue Statement of Practice SP5/78 (conveyance in consideration of a debt), 8 November 1978; Inland Revenue Statement of Practice SP6/90 (conveyances and transfers of property subject to a debt), 27 April 1990.

4 See *Swayne v IRC*[1899] 1 QB 335; affd [1900] 1 QB 172, CA.

5 Where a local constituency association of a political party is entitled to relief under the Taxation of Chargeable Gains Act 1992 s 264 (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 289) on the disposal of land following boundary changes, it is also entitled to certain relief from stamp duty: Finance (No 2) Act 1983 s 15(1) (amended by the Finance Act 1985 s 82(4), (6)); Taxation of Chargeable Gains Act 1992 s 290(1), Sch 11 para 29(3). In such circumstances the Stamp Act 1891 s 57 does not apply to a conveyance or transfer by which the disposal or disposals is or are effected: Finance (No 2) Act 1983 s 15(1) (as so amended).

6 Finance Act 1980 s 102(1)(a).

7 Ie under the Stamp Act 1891 s 57.

8 Finance Act 1980 s 102(1)(b).

9 Ibid s 102(1).

10 Ibid s 102(2). As to adjudication see PARA 1111 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

148 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

149 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in

the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

150 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

## *E. CONVEYANCE ON SALE OF INTEREST IN LAND WHERE CONSIDERATION UNASCERTAINABLE*

### 1047. Unascertainable consideration.

Where for the purposes of stamp duty chargeable under the heading 'Conveyance or Transfer on Sale'[1] the consideration[2], or any part of the consideration, for the transfer or vesting or any estate or interest in land cannot otherwise be ascertained[3] at the time the instrument is executed[4], the consideration for the transfer or vesting is taken to be the market value[5] immediately before the instrument is executed or the estate or interest transferred or vested[6].

1 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 et seq ante.

2 In the context of the conveyance on sale head of charge, references to consideration would appear to be to the amount or value of the consideration given or agreed to be given for the sale, by reference to which ad valorem duty is calculated under the Finance Act 1963 s 55(1) (as amended): see PARA 1027 ante.

3 For these purposes, the cases where consideration cannot be ascertained do not include cases where the consideration could be ascertained on the assumption that any future event mentioned in the instrument were or were not to occur: Finance Act 1994 s 242(3)(a). As to the circumstances in which the consideration is ascertained for the purposes of the charge see PARAS 1019, 1034 ante. For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of s 257(3)).

4 For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of ibid s 257(3)).

5 For these purposes, the market value of property at any time is the price which that property might reasonably be expected to fetch on a sale at that time in the open market: ibid s 241(2) (applied by virtue of s 242(3)).

6 Ibid s 242(1). Section 242 applies to instruments executed after 7 December 1993: s 242(4).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

151 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

152 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

153 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1047 Unascertainable consideration

NOTE 2--Finance Act 1963 s 55 repealed except in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20 Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/F. CONVEYANCE IN CONTEMPLATION OF SALE/1048. Conveyance in contemplation of sale; the charge.

## *F. CONVEYANCE IN CONTEMPLATION OF SALE*

### 1048. Conveyance in contemplation of sale; the charge.

For stamp duty purposes, any instrument[1] by which property is conveyed or transferred to any person in contemplation of a sale of that property is to be treated as a conveyance or transfer on sale of that property for a consideration equal to the value of the property[2]. The stamp duty on the instrument must, however, be adjudicated[3] in order for the instrument to be duly stamped[4].

If, on a claim made to the Commissioners of Inland Revenue[5], it is shown to their satisfaction that the sale in contemplation of which the instrument was made or executed has not taken place and the property has been reconveyed or retransferred to the person from whom it was conveyed or transferred or to a person to whom his rights have been transmitted on death or bankruptcy, the commissioners must repay the duty in so far as it exceeds the duty which would have been payable apart from these provisions[6]. Similarly, if, on such a claim, it is shown to the commissioners' satisfaction that the sale has taken place for a consideration which is less than the value in respect of which duty was paid under these provisions, they must repay the duty in so far as it exceeds the duty which would have been payable if the instrument had been stamped in respect of a value equal to the consideration in question[7].

These provisions apply whether or not the instrument conveys or transfers other property in addition to the property in contemplation of the sale of which it is made or executed, but they do not affect the duty chargeable on the instrument in respect of that other property[8].

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1965 s 90(6)).

2 Ibid s 90(1), nullifying *Wm Cory & Son Ltd v IRC*[1965] AC 1088, [1965] 1 All ER 917, HL, with effect from 1 August 1965 (Finance Act 1965 s 90(7)).

3 Ie under the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

4 See the Finance Act 1965 s 90(3).

5 The claim must be made not later than two years after the making or execution of the instrument: ibid s 90(2). For the meaning of 'execution' and 'executed' see PARA 1007 note 5 ante (definition applied by virtue of s 90(6)).

6 Ibid s 90(2)(a).

7 Ibid s 90(2)(b).

8 Ibid s 90(4).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

154 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

155 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

156 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1049. Determination of value of property conveyed.**

The value of the property conveyed or transferred in contemplation of sale by an instrument[1] chargeable as a conveyance or transfer on sale[2] is to be determined without regard to:

50 (1) any power, whether contained in the instrument or not, on the exercise of which the property, or any part of it or any interest in it, may be revested in the grantor or transferor, or in any person on his behalf [3];

51 (2) any annuity reserved out of the property or any part of it, or any life or other interest so reserved, being an interest which is subject to forfeiture[4].

If, however, on a claim made to the Commissioners of Inland Revenue[5], it is shown to their satisfaction that any such power as is mentioned in head (1) above has been exercised in relation to the property and the property or any property representing it has been reconveyed or retransferred in whole or in part in consequence of that exercise, the commissioners must repay the stamp duty paid, in a case where the whole of the property has been so reconveyed or retransferred, so far as it exceeds the duty which would have been payable apart from this provision, and, in any other case, so far as it exceeds the duty which would have been payable if the instrument had operated to convey only the property not so reconveyed or retransferred[6].

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1965 s 90(6)).

2 Ie under ibid s 90(1), (2): see PARA 1048 ante.

3 Ibid s 90(5)(a) (s 90(5) amended by the Finance Act 1985 ss 82(3), (6), 98(6), Sch 27 Pt IX).

4 Finance Act 1965 s 90(5)(b) (as amended: see note 3 supra).

5 The claim must be made not later than two years after the making or execution of the instrument: ibid s 90(5). For the meaning of 'execution' see PARA 1007 note 5 ante (definition applied by virtue of s 90(6)).

6 Ibid s 90(5).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject

matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

157 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

158 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

159 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

## *G. PROPERTY VESTED ON SALE OR PURCHASED UNDER STATUTE*

### 1050. Property vested or purchased under statute.

Where, by virtue of any Act, either (1) any property is vested by way of sale in any person[1]; or (2) any person is authorised to purchase property[2], that person must, within three months after the passing of the Act or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to the Commissioners of Inland Revenue a Queen's Printer's copy[3] of the statute or some instrument relating to the vesting in the first case, and an instrument of conveyance in the second case, duly stamped with the ad valorem stamp duty payable on a conveyance on sale of the property[4].

The conveyance produced need not include any goods, wares or merchandise forming part of the property, and if the property consists wholly of goods, wares or merchandise no conveyance need be produced[5]. In default of production, the duty and interest at the rate of 5 per cent per annum from the passing of the Act, the date of vesting or the completion of the purchase of the property, as the case may be, becomes a debt due to the Crown from the person in default[6].

There are numerous statutory exclusions from these provisions[7].

A minister or local or public authority authorised to acquire land by means of a compulsory purchase order may make a general vesting declaration vesting that land in himself or itself[8]. Such a declaration may involve a number of properties acquired from several owners as well as the compulsory purchase of a single property. Liability to stamp duty depends on whether or not the compensation payable by the minister or authority has been determined in whole, in part or not at all at the date of the execution of the instrument[9].

1 Finance Act 1895 s 12(a).

2 Ibid s 12(b).

3 As to Queen's Printer's copies see CIVIL PROCEDURE vol 11 (2009) PARAS 888-889, 892.

4 Finance Act 1895 s 12. On a purchase by a local authority under a statutory power authorising the purchase of specific property, a production of the conveyance under s 12 is required where ad valorem duty is payable as well as production under the Finance Act 1931 s 28 (as amended) (see PARA 1026 ante): (1954) 104 L Jo 846.

As to the exemption from conveyance duty of agreements by development corporations for the transfer of water or sewerage undertakings see PARA 1086 post. The consideration for the transfer is to be left out of account in considering what duty, if any, is payable under the Finance Act 1895 s 12 on (1) a statutory transfer of property when a nationalisation scheme is first put into force (Finance Act 1946 s 52(a): see further PARA 1086 post); or (2) a transfer of property by order under the Public Health Act 1936 to a joint board constituted under s 6 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 101), from another local authority (Finance Act 1952 s 74(1)(b) (amended by the Finance Act 1974 s 52(1), Sch 12 para 6); or (3) a transfer under a harbour reorganisation scheme (Finance Act 1966 s 45(5)). 'Harbour reorganisation scheme' means any statutory provision providing for the management by a harbour authority (see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 619 et seq) of any harbour or group of harbours in the United Kingdom: s 45(6). See also the text and note 7 infra. Nothing in the Finance Act 1895 s 12 applies to the National Health Service Reorganisation Act 1973 or an order made under it, and stamp duty is not payable on such an order: s 49.

5 Finance Act 1949 s 36(4), in effect overruling on this point *Eastbourne Corpn v A-G*[1904] AC 155, HL. The Finance Act 1949 s 36(4) is prospectively amended by the Finance Act 1991 s 114(1), (2) so as to substitute for the words 'goods, wares or merchandise' the words 'exempt property': s 114(2). 'Exempt property' has the same meaning as in s 110 (see PARA 1006 note 5 ante): Finance Act 1949 s 36(5) (prospectively added by the Finance Act 1991 s 114(3)). Section 114(3) will apply where the Act mentioned in the Finance Act 1895 s 12, and by virtue of which property is vested or a person is authorised to purchase property, is passed on or after the abolition day: Finance Act 1991 s 114(4). 'The abolition day' is a day to be appointed by the Treasury by statutory instrument under the Finance Act 1990 s 111(1) (see PARA 1004 ante): Finance Act 1991 s 110(7) (applied by virtue of s 114(5)). At the date at which this volume states the law, no such day had been appointed.

6 Finance Act 1895 s 12. As to proceedings by the Crown generally see CROWN PROCEEDINGS AND CROWN PRACTICE.

7 Statutory provisions under which ibid s 12 is excluded include (1) the Transport Act 1962 s 41(1) (vesting under that Act: see WATER AND WATERWAYS vol 101 (2009) PARA 727); (2) the Transport Act 1968 s 160(1) (vesting under that Act); (3) the Atomic Energy Authority Act 1971 s 22(1) (vesting on transfer from the United Kingdom Atomic Energy Authority to British Nuclear Fuels Ltd: see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1377); (4) the Atomic Energy Authority (Weapons Group) Act 1973 s 7 (transfer to the Secretary of State of responsibility for explosive nuclear devices: see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1386); (5) the National Health Service Reorganisation Act 1973 s 49 (vesting under that Act); (6) the Agriculture (Miscellaneous Provisions) Act 1976 s 1(7) (transfers on dissolution of the Sugar Board: see further TRADE AND INDUSTRY vol 97 (2010) PARA 840); (7) the Race Relations Act 1976 s 79(1), Sch 2 para 10(2) (vesting of property in the Commission for Racial Equality); (8) the Aircraft and Shipbuilding Industries Act 1977 ss 20(6), 29(9), Sch 3 para 8, Sch 4 para 7 (vesting in acquired companies: see further TRADE AND INDUSTRY vol 97 (2010) PARA 852); (9) the National Health Service Act 1977 s 96(3) (transfers of trust property for health service purposes etc; and HEALTH SERVICES vol 54 (2008) PARA 71); (10) the New Towns Act 1981 s 72(1) (transfer from development corporation, the Commission for the New Towns or a new town corporation: see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1407); (11) the Railways Act 1993 s 112, Sch 9 para 2(6) (restructuring schemes); and (12) the Water Resources Act 1991 s 1(1)(e), Sch 2 para 8(2) (vesting in water authority: see WATER AND WATERWAYS). Stamp duty is not chargeable on any transfer effected by the Electricity Act 1989 (see s 90, Sch 11 para 11(1)) although the Finance Act 1895 s 12 is not specifically excluded. Heads (1)-(12) supra are by way of illustration and do not constitute an exhaustive list.

8 See the Compulsory Purchase (Vesting Declarations) Act 1981 s 1; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 686.

9 If the compensation has been wholly determined, ad valorem conveyance on sale duty is charged in respect of the total compensation payable to each owner, the declaration being regarded for the purposes of the Finance Act 1958 s 34(4) (as prospectively amended) (see PARA 1028 ante) as a separate transaction between each owner and the minister or authority.

If the compensation is only partly determined, ad valorem conveyance on sale duty is charged in respect of the ascertainable compensation paid or payable to each owner, and in addition 50p fixed conveyance duty is charged for each owner in respect of the remaining unascertainable consideration, no certificate of value being admissible.

If the compensation is wholly undetermined, 50p fixed duty is charged in respect of each acquisition, a separate duty being charged in respect of each owner, and no adjudication being necessary.

As such a declaration effects a conveyance on sale, it must be produced under the Finance Act 1931 s 28 (as amended) (see PARA 1026 ante) even when the amount of the compensation is wholly undetermined. The produced stamp under the Finance Act 1895 s 12 is required only where the declaration has been duly stamped with ad valorem duty.

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the

enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

160 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

161 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

162 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net

market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1050 Property vested or purchased under statute**

TEXT AND NOTES--For the application of these provisions where the property transferred is or includes intellectual property see PARA 1096A.

The Finance Act 1895 s 12 does not require any person who is authorised to purchase any property therein mentioned after 23 April 2002 to include any goodwill in the instrument of conveyance required to be produced to the Commissioners; and if the property consists wholly of goodwill no instrument of conveyance need be so produced: Finance Act 2002 s 116(2), Sch 37 para 4.

TEXT AND NOTES 1-4--In head (1) for 'property is' read 'stock and marketable securities are'; in head (2) for 'property' read 'stock and marketable securities'; and for 'conveyance' read 'transfer': 1895 Act s 12 (amended by Finance Act 2003 Sch 20 para 4).

NOTE 7--Aircraft and Shipbuilding Industries Act 1977 s 29(9), Sch 4 para 7 repealed: Statute Law (Repeals) Act 2004.

For similar exemptions from stamp duty land tax, see the Airports Act 1986 s 76A, the Ports Act 1991 s 36A, the Water Resources Act 1991 Sch 2 para 8(3)-(5) (added by SI 2003/2867).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/H. PUBLIC HOUSING RIGHT TO BUY SCHEMES/1051. Shared ownership transactions.

## *H. PUBLIC HOUSING RIGHT TO BUY SCHEMES*

### 1051. Shared ownership transactions.

Certain leases granted by local housing authorities[1] and other specified bodies[2] or granted by or to specified persons[3] and fulfilling prescribed conditions are not charged to stamp duty as leases[4] but are charged as conveyances or transfers on sale[5] as if they were conveyances for a consideration equal to the value or sum stated in the lease as mentioned below[6], and, where the duty has been paid on a lease in accordance with this provision, duty is not charged on any instrument[7] executed in pursuance of the lease by which the reversion is transferred to the lessee[8]. This method of assessment applies to any lease so granted which:

52 (1) is of a dwelling for the exclusive use of the lessee or, if there are joint lessees, of those lessees[9];
53 (2) is granted partly in consideration of a premium calculated by reference to the market value of the dwelling[10], or to a sum calculated by reference to that value[11], and partly in consideration of rent[12];
54 (3) provides for the lessee to acquire the reversion[13]; and
55 (4) contains a statement of the market value or, as the case may be, the sum referred to in head (2) above, and a statement to the effect that the parties intend duty to be charged in accordance with this provision by reference to that value or that sum[14].

An instrument transferring a reversion is not to be regarded for these purposes as executed in pursuance of a lease in respect of which duty has been paid in accordance with these provisions unless it contains a statement to the effect that it has been so executed[15].

Furthermore, where a lease granted by one of the specified bodies is one which:

56 (a) is of a dwelling for the exclusive use of the lessee or, if there are joint lessees, of those lessees[16];
57 (b) provides that the lessee may on payment of a sum require the terms of the lease to be altered so that the rent payable under it is reduced[17];
58 (c) is granted partly in consideration of rent and partly in consideration of a premium calculated by reference to the premium obtainable on the open market for the grant of a lease containing the same terms as the lease but with the substitution for the rent payable under the lease of the minimum rent[18], or by reference to a sum calculated by reference to that premium[19]; and
59 (d) contains a statement of the minimum rent and the premium, or, as the case may be, the sum referred to in head (c) above, and a statement to the effect that the parties intend duty to be charged in accordance with this provision[20] by reference to that rent and that premium or, as the case may be, that sum[21],

then the lease is chargeable to stamp duty as if the premium paid by the lessee were equal to the premium or, as the case may be, the sum stated in the lease in accordance with head (d) above and the rent payable were as so stated[22].

1 Ie a local housing authority within the meaning of the Housing Act 1985: Finance Act 1980 s 97(3)(a) (substituted by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 43).

2 The other bodies are (1) a housing association within the meaning of the Housing Act 1985 (see HOUSING vol 22 (2006 Reissue) PARA 11) (Finance Act 1980 s 97(3)(b) (substituted by the Housing (Consequential Provisions) Act 1985 Sch 2 para 43)); (2) a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981 (see TOWN AND COUNTRY PLANNING) (Finance Act 1980 s 97(3)(c); Interpretation Act 1978 s 17(2)(a)); (3) a housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 320) (Finance Act 1980 s 97(3)(cc) (added by the Finance Act 1988 s 142(1)); (4) the Commission for the New Towns (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1383 et seq) (Finance Act 1980 s 97(3)(d)); (5) the Development Board for Rural Wales (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1309 et seq) (s 97(3)(e)); and (6) the Northern Ireland Housing Executive (s 97(3)(f)).

3 Ie by a person against whom the right to buy under the Housing Act 1985 Pt V (ss 118-188) (as amended) is exercisable by virtue of s 171A (as added) (preservation of the right to buy on disposal to private sector landlord: see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1900 et seq) or to a person who is the qualifying person for the purposes of the preserved right to buy and in relation to whom that dwelling house is the qualifying dwelling house: Finance Act 1987 s 54(2), (3).

4 Ie under the Stamp Act 1891 s 1, Sch 1, 'Lease or Tack' (as amended): see PARA 1054 et seq post.

5 Ie under ibid Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

6 Ie in accordance with the Finance Act 1980 s 97(2)(d) (as amended): see head (4) in the text and note 14 infra.

7 For the meaning of 'instrument' cf para 1001 ante, although the Finance Act 1980 s 97 (as amended) is not directed to be construed as one with the Stamp Act 1891.

8 Finance Act 1980 s 97(1) (amended by the Finance Act 1981 s 108(1), (2)). Section 108 applies to instruments executed on or after 23 March 1981: s 108(7).

9 Finance Act 1980 s 97(2)(a).

10 Ibid s 97(2)(b)(i) (substituted by the Finance Act 1981 s 108(3)(a)).

11 Finance Act 1980 s 97(2)(b)(ii) (as substituted: see note 10 supra).

12 Ibid s 97(2)(b) (as substituted: see note 10 supra).

13 Ibid s 97(2)(c).

14 Ibid s 97(2)(d) (amended by the Finance Act 1981 s 108(3)(b)).

15 Finance Act 1980 s 97(4).

16 Finance Act 1981 s 108(5)(a).

17 Ibid s 108(5)(b).

18 Ibid s 108(5)(c)(i). 'Minimum rent' in relation to any lease means the lowest rent which could become payable under the lease if it were altered as mentioned in head (b) in the text at the date when the lease is granted: s 108(6).

19 Ibid s 108(5)(c)(ii).

20 Ie ibid s 108: see the text and notes 16-19 supra, 21-22 infra.

21 Ibid s 108(5)(d).

22 Ibid s 108(5).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

163 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

164 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2)

Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

165 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1051 Shared ownership transactions**

NOTE 2--Head (5) omitted: Finance Act 1980 s 97(3)(e) (repealed by the Government of Wales Act 1998 Sch 18 Pt IV).

NOTE 9--Stamp Act 1891 Sch 1 replaced by the Finance Act 1999 Sch 13 Pt II (paras 10-15). The second head of charge is now simply 'Lease': Sch 14 para 28. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(i) Conveyance or Transfer on Sale and other Instruments Chargeable/H. PUBLIC HOUSING RIGHT TO BUY SCHEMES/1052. Rent to mortgage schemes.

**1052. Rent to mortgage schemes.**

For the purposes of duty chargeable under the heading 'Conveyance or Transfer on Sale'[1], where a person exercises a statutory right to acquire a dwelling house on rent to mortgage terms[2] and in pursuance of the exercise of that right a conveyance of the freehold is executed in his favour as regards the dwelling house concerned, the consideration for the sale is to be taken to be equal to the price which would be payable[3] for the dwelling house on a conveyance if the person were exercising the statutory right[4] to buy[5].

Where a person exercises the right to acquire on rent to mortgage terms but a lease, rather than a conveyance, is executed in his favour as regards the dwelling house concerned, the lease is chargeable as if it were a conveyance on sale, and not as a lease[6], and the consideration for the sale is to be taken to be equal to the price which would be payable[7] for the dwelling house on a grant if the person were exercising the statutory right to buy[8].

These provisions enable the amount of the consideration to be ascertained at the time the instrument is executed so that the instrument may be certified for the purpose of the stamp duty threshold in appropriate cases[9].

1 Ie the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

2 Ie the right to acquire on rent to mortgage terms under the Housing Act 1985 Pt V (ss 118-188) (as amended): see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1872 et seq.

3 Ie by virtue of ibid s 126: see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1836.

4 Ie the right to buy under ibid Pt V (as amended): see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1795 et seq.

5 Finance Act 1993 s 202(1), (2). Section 202 applies to a conveyance or lease executed after 27 July 1993: s 202(5).

6 Ie the lease is chargeable under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended) and not under Sch 1, 'Lease or Tack' (as amended) (see PARA 1054 et seq post): Finance Act 1993 s 202(4)(a). See also PARA 1054 note 1 ante.

7 See note 3 supra.

8 Finance Act 1993 s 202(3), (4).

9 See PARAS 1027-1028 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s

125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

166 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

167 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

168 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely

on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1052 Rent to mortgage schemes**

NOTES 1, 6--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pts I (paras 1-9), II (paras 10-15). The head of charge is now simply 'Lease': Sch 14 para 6. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122.

**1053. Conveyance on sale of house at a discount by a local housing authority etc.**

On a conveyance or transfer on sale of a dwelling house (including the grant of a lease) at a discount[1] by any minister of the Crown or Northern Ireland department[2], a local housing authority[3] or any of certain other bodies[4], where it is subject contingently to the payment of any money, whether by virtue of that conveyance or transfer or otherwise, the money (notwithstanding the general rule that that money is part of the consideration in respect of which ad valorem stamp duty is chargeable[5]) is not deemed to be part of the consideration[6].

These provisions also apply to:

60 (1) any conveyance or transfer on sale of a dwelling house where the conveyance or transfer is made pursuant to a sub-sale made at a discount by a registered[7] housing association[8];

61 (2) a conveyance or transfer on sale, including the grant of a lease, by a person against whom the right to buy[9] is exercisable by virtue of its preservation on disposal to a private sector landlord[10] to a person who is the qualifying person for the purposes of the preserved right to buy and in relation to whom that dwelling house is the qualifying dwelling house[11].

1 The Finance Act 1981 s 107 (as amended) (see the text and notes 2-11 infra) also applied to a conveyance or transfer on sale of a dwelling house (including the grant of a lease) by a person against whom the preserved right to buy was exercisable by virtue of the Local Government Reorganisation (Preservation of Right to Buy) Order 1986, SI 1986/2092, to a person who was a qualifying person for the purposes of the 1986 Order and in relation to whom that dwelling house was the qualifying dwelling house, where the qualifying disposal was made before 5 April 1989: see art 12; and the Housing (Preservation of Right to Buy) Regulations 1989, SI 1989/368, reg 4 (revoked). As to the preservation of the right to buy see generally LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1900 et seq. See also heads (1)-(2) in the text.

2 Finance Act 1981 s 107(3)(a).

3 Ie a local housing authority within the meaning of the Housing Act 1985: Finance Act 1981 s 107(3)(b) (amended by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 48(a)). The Finance Act 1981 s 107(3)(b) (as so amended) also refers to a county council, as well as certain local authorities in Scotland and Northern Ireland.

4 The other bodies are (1) the Housing Corporation (see HOUSING vol 22 (2006 Reissue) PARA 18 et seq) (Finance Act 1981 s 107(3)(c)); (2) Housing for Wales (Finance Act 1981 s 107(3)(ca) (added by the Housing Act 1988 s 140(1), Sch 17 para 105)); (3) the Northern Ireland Housing Executive (Finance Act 1981 s 107(3)(e)); (4) a housing association registered under the Housing Associations Act 1985 or the corresponding Northern Ireland legislation (see HOUSING vol 22 (2006 Reissue) PARA 11 (Finance Act 1981 s 107(3)(f) (amended by the Housing (Consequential Provisions) Act 1985 Sch 2 para 48(b))); (5) a housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (as amended) (Finance Act 1981 s 107(3)(ff) (added by the Finance Act 1988 s 142(2))); (6) a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1322 et seq), or an urban development corporation established by an order made under the Local Government, Planning and Land Act 1980 s 135 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1428 et seq) (Finance Act 1981 s 107(3)(g); Interpretation Act 1978 s 17(2)(a)); (7) the Commission for the New Towns (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1383 et seq) (Finance Act 1981 s 107(3)(h)); (8) the Development Board for Rural Wales (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1309 et seq) (s 107(3)(i)); (9) the Council of the Isles of Scilly (see LOCAL GOVERNMENT vol 69 (2009) PARA 36) (s 107(3)(3)(j)); (10) a police authority within the meaning of the Police Act 1964 s 62 (as substituted) (see POLICE vol 36(1) (2007 Reissue) PARA 139) (Finance Act 1981 s 107(3)(k) (amended by the Police and Magistrates' Courts Act 1994 s 44, Sch 5 para 22)); (11) the United Kingdom Atomic Energy Authority (Finance Act 1981 s 107(3)(n) (added by the Finance Act

1984 s 110(2))); and (12) certain corresponding and other bodies in Scotland and Northern Ireland (see the Finance Act 1981 s 107(3)(d)-(h), (k)-(m)). The Treasury may prescribe other bodies for this purpose by order made by statutory instrument: s 107(3)(o) (added by the Finance Act 1984 s 110(5)). At the date at which this volume states the law, no such order had been made.

5 Ie under the Stamp Act 1891 s 57: see PARA 1046 ante.

6 Finance Act 1981 s 107(1). These provisions apply to instruments executed on or after 23 March 1981: s 107(4).

7 Ie a housing association registered under the Housing Associations Act 1985 such as is mentioned in the Finance Act 1981 s 107(3)(f) (as amended): see note 4 head (4) supra.

8 Ibid s 107(3A) (added by the Finance Act 1984 s 110(3)). The Finance Act 1981 s 107(3A) (as so added) applies with respect to instruments executed on or after 20 March 1984 or executed on or after 13 March 1984 and stamped on or after 20 March 1984: Finance Act 1984 s 110(4).

9 Ie under the Housing Act 1985 Pt V (ss 118-188) (as amended): see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1795 et seq.

10 Ie by virtue of ibid s 171A (as added): see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1900 et seq.

11 Finance Act 1981 s 107(3B) (added by the Housing and Planning Act 1986 s 24(2), Sch 5 para 18). As to a conveyance or lease on a rent to mortgage basis see PARA 1052 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

169 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

170 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch

15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

171 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1053 Conveyance on sale of house at a discount by a local housing authority

NOTE 4--Heads (2), (8) omitted: Finance Act 1981 s 107(3)(ca), (i) (both repealed by the Government of Wales Act 1998 Sch 18 Pts IV, VI).

Head (10) For 'Police Act 1964 s 62' read 'the Police Act 1996 s 101(1)': Finance Act 1981 s 107(3)(k) (amended by the Police Act 1996 Sch 7 para 33).

A registered social landlord within the meaning of the Housing Act 1996 Pt I (see HOUSING vol 22 (2006 Reissue) PARA 67) is added to the list of bodies: 1981 Act s 107(3)(ea) (added by the Housing Act 1996 Sch 3 para 1. Finance Act 1981 s 107(3)(f) (amended by the Housing Act 1996 Sch 3, PARA 1) now refers to the corresponding legislation in Scotland in addition to Northern Ireland.

TEXT AND NOTE 8--Head (1) also applies to a registered social landlord within the meaning of the Finance Act 1981 s 107(3)(ea) (as added: see NOTE 4): Finance Act 1981 s 107(3A) (added by the Housing Act 1996 Sch 3 para 1).

TEXT AND NOTE 11--A grant under the Housing Act 1996 s 20 or 21 (see HOUSING vol 22 (2006 Reissue) PARA 115) must not be treated as part of the consideration for a conveyance or transfer to which the 1981 Act s 107 applies made by a registered social landlord: Finance Act 1981 s 107(3C) (added by the Housing Act 1996 Sch 3 para 1(5)).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/A. LEASES/1054. Leases.

## (ii) Leases and Agreements for Leases

## *A. LEASES*

### 1054. Leases.

A lease must generally be stamped ad valorem on the rent and any premium or other consideration[1]. The lease must be stamped in accordance with the law at the time of execution, not at the nominal date[2]. Ad valorem stamp duty is only payable where the instrument operates as a lease or tenancy agreement; hence a written acknowledgment by the tenant of an existing tenancy[3], or a written proposal made in the course of negotiations for a lease[4], does not require a stamp. Where, however, there is a written lease, duty is payable notwithstanding that the lease might have been made orally[5]. Where duty has been duly paid on an agreement for a lease, and subsequently a lease is granted which either conforms to the agreement or relates substantially to the same property and term, then such duty as would otherwise be charged on the lease is reduced (or extinguished) by deducting the duty already paid on the agreement[6]. If an agreement for a lease is presented for stamping at the same time as the lease which gives effect to the agreement, and the duty (if any) chargeable on the agreement is paid, the agreement is treated for the purposes of the penalty provisions as if it had been executed when the lease was executed[7]. An agreement to surrender a lease may in certain circumstances be chargeable as a conveyance on sale[8]. A lease of a kind which is not specifically charged with duty[9] is chargeable with fixed duty of £2[10].

Where the stamp duty on a lease does not amount to 50 pence, a counterpart or duplicate must bear the same stamp as the lease; in any other case it must bear a 50 pence stamp[11]. A duplicate must also bear a stamp, to be affixed on application to the Commissioners of Inland Revenue, denoting that the original is duly stamped[12], but a counterpart of a lease does not require a denoting stamp[13].

Failure to stamp any lease or other document required to be stamped does not invalidate it, but the document may not be registered, relied upon or received in evidence unless and until it is properly stamped and any penalty paid[14].

1 See the Stamp Act 1891 s 1, Sch 1, 'Lease or Tack' (as amended); see further the text and notes 2-14 infra and PARA 1058 et seq post. As to the relief from ad valorem duty in respect of short leases of furnished dwellings see PARA 1096 post. Leases to charity are exempt from stamp duty: see PARA 1093 post. Certain leases granted pursuant to public housing right to buy schemes are chargeable with stamp duty under Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARAS 1051-1053 ante. Except where statute expressly provides to the contrary, leases of Crown land are charged with stamp duty: see PARA 1001 note 16 ante. Where any lease is made or agreed to be made to a minister of the Crown or the Treasury solicitor, no stamp duty is chargeable under the heading 'Lease or Tack' on the instrument by which the lease, or the agreement for it, is effected: Finance Act 1987 s 55(1)(c); and see PARA 1094 post. A lease granted for a fixed term and thereafter until determined is treated as a lease for a definite term equal to the fixed term together with such further period as must elapse before the earliest date at which the lease can be determined: Finance Act 1963 s 56(3). 'Tack' is an expression used in the law of Scotland; and for the purposes of this title, except when referring to the Stamp Act 1891 Sch 1, 'Lease or Tack' (as amended), the word 'lease' is used instead of the words 'lease or tack' when discussing the statutory provisions relating to stamp duty on leases.

2 *Clarke v Roche*(1877) 3 QBD 170.

3 *Eagleton v Gutteridge* (1843) 11 M & W 465; *Hill v Ramm* (1843) 5 Man & G 789. An instrument by which an occupier admits that he is in possession upon sufferance only and agrees to give up possession when required does not require to be stamped: *Barry v Goodman* (1837) 2 M & W 768.

4 *Bethell v Blencowe* (1841) 3 Man & G 119.

5 *Prossor v Phillips* (1765) Bull NP (5th Edn) 269.

6 Stamp Act 1891 s 75(2) (substituted by the Finance Act 1984 s 111(1)). Where an interest in land is conveyed or transferred, or a lease is granted, subject to an agreement for a lease exceeding 35 years, for it to be taken as stamped there must be denoted on the conveyance, transfer or lease the duty paid on the agreement: s 111(2). Such an interest conveyed or transferred or lease granted is not, however, regarded as subject to an agreement for a lease if that agreement is directly enforceable against another interest in the land in relation to which the interest conveyed or transferred or the lease granted is a superior interest: s 111(3). The Stamp Act 1891 s 11 (denoting stamps: see PARA 1024 ante) has effect for these purposes as if the duty chargeable on the conveyance, transfer or lease depended on the duty paid on the agreement: Finance Act 1984 s 111(2). Section 111 applies to any agreement for a lease entered into on or after 20 March 1984: s 111(5).

7 See PARA 1020 ante.

8 See PARA 1064 post.

9 Eg a lease granted for consideration other than money, stock, securities or other property. As to the ad valorem duties on rent and premiums see PARA 1058 et seq post.

10 Stamp Act 1891 Sch 1, 'Lease or Tack' para (4) (amended by the Finance Act 1963 s 56(4); and by the Finance Act 1974 s 49(1), Sch 11 para 10(2)).

11 Stamp Act 1891 Sch 1, 'Duplicate or Counterpart' (amended by the Finance Act 1974 Sch 11 para 9). See further PARA 1079 post.

12 See the Stamp Act 1891 ss 11, 72; and PARAS 1024 ante, 1079 post.

13 Counterparts of leases (those counterparts not being executed by the landlord) are expressly excepted from the statutory provision requiring counterparts as well as duplicates to bear a denoting stamp: see ibid s 72; and PARA 1079 post.

14 See ibid s 14; para 1007 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 959.

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

172 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a

partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

173 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

174 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals,

do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1054 Leases**

TEXT AND NOTES--The amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20 Pt V(2).

For the exemption from charge under these provisions of land in disadvantaged areas see the Finance Act 2001 s 92; and PARA 1027.

No stamp duty is chargeable under the Finance Act 1999 Sch 13 Pt II on a lease of a dwelling granted by registered social landlord to one or more individuals, if (1) it is granted in accordance with arrangements between such a landlord and a housing authority under which the landlord provides, for individuals nominated by the authority in pursuance of its statutory housing functions, temporary rented accommodation which the landlord itself has obtained on a short-term basis (ie it is leased to the landlord for a term of five years or less); and (2) the lease is for an indefinite term or is terminable by notice of a month or less: Finance Act 2003 s 128(1), (3). 'Registered social landlord' means a body registered in the register maintained under the Housing Act 1996 s 1(1) (see HOUSING vol 22 (2006 Reissue)) PARA 67); and 'housing authority' means, a principal council within the meaning of the Local Government Act 1972 or the Common Council of the City of London (see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq): Finance Act 2003 s 128(2), (4). An instrument on which stamp duty is not chargeable by virtue only of this provision is not taken to be duly stamped unless it is stamped with the duty to which it would otherwise be liable, or it has, in accordance with the Stamp Act 1891 s 12, been stamped with a particular stamp denoting that it is not chargeable with any duty: Finance Act 2003 s 128(5). Section 128 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 128(6). For relief for certain leases granted before 10 July 2003 (ie the date on which the Finance Act 2003 was passed), and for the treatment of certain leases involving registered social landlords which were granted between 1 January 1990 and 27 March 2000, see the Finance Act 2003 ss 129, 130.

TEXT AND NOTES 1, 11--Stamp Act 1891 Sch 1 replaced by the Finance Act 1999 Sch 13 para 10. The head of charge is now simply 'Lease': Sch 14 para 2.

TEXT AND NOTE 6--1891 Act s 75(2) replaced by the Finance Act 1999 Sch 13 para 14(2).

TEXT AND NOTE 10--Replaced. The fixed duty is now £5 and the head of charge is simply 'Lease': Finance Act 1999 Sch 13 para 13, Sch 14 para 2.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/A. LEASES/1055. Collateral and incidental provisions.

**1055. Collateral and incidental provisions.**

An instrument containing or relating to several distinct matters requires to be stamped as a separate instrument in respect of each of those matters[1]. This may happen, in the case of a lease, either because the instrument operates as separate leases of distinct premises to the same[2] or different persons[3], or because, in addition to operating as a lease, it has a further operation not merely incidental to its operation as a lease[4]. An option to purchase property not included in the lease may be chargeable as a conveyance on sale[5], but an option to purchase the demised property is incidental to the lease and requires no further stamp[6].

1 Stamp Act 1891 s 4(a): see PARA 1015 ante.

2 The mere inclusion in a lease to one tenant of separate premises at separate rents does not necessitate separate stamps, and it is sufficient if there is an ad valorem stamp on the aggregate amount of the rent (*Boase v Jackson* (1822) 3 Brod & Bing 185; *Blount v Pearman* (1834) 1 Bing NC 408; *Parry v Deere* (1836) 5 Ad & El 551); but if the remedies for each rent by distress and re-entry are restricted to the premises in respect of which the rent is reserved, the instrument probably operates as though it contained distinct leases, and attracts separate duties (see *Dodson Bull Carpet Co Ltd v City of London Corpn* [1975] 2 All ER 497, [1975] 1 WLR 781).

3 *Doe d Copley v Day* (1811) 13 East 241 at 246. If such an instrument bears a stamp suitable only to one demise, evidence is admissible to show to which demise it was intended to apply: *Doe d Copley v Day* supra. A lease to joint tenants requires only a single stamp: *Cooper v Flynn* (1841) 3 ILR 472.

4 *Corder v Drakeford* (1811) 3 Taunt 382. A contract for the sale of chattels requires no stamp (see *Clayton v Burtenshaw* (1826) 5 B & C 41), but, if the instrument operates as a conveyance of the chattels, a conveyance on sale stamp is necessary (*Horsfall v Hey* (1848) 2 Exch 778; cf *Garnett v IRC* (1899) 81 LT 633, DC; and see the Finance Act 1958 s 34(4) (as prospectively amended); and PARAS 1027-1028, 1030 ante).

5 See PARA 1030 note 7 ante.

6 *Worthington v Warrington* (1848) 5 CB 635.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

175 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

176 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

177 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a

person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/A. LEASES/1056. Improvements or additions by tenant.

**1056. Improvements or additions by tenant.**

In general, where an instrument is made for a consideration which attracts ad valorem stamp duty, and also for any further valuable consideration, it is to be stamped separately in respect of each consideration[1]. Where, however, in a lease, the further consideration consists in the tenant having previously made, or of a covenant by him to make, any substantial improvement of or addition to the demised premises, or of any covenant relating to the matter of the lease, no duty is payable in respect of the further consideration[2] unless the covenant is one which, if contained in a separate deed, would be chargeable with ad valorem stamp duty, in which case the lease must bear this additional ad valorem stamp[3].

In view, however, of the general abolition of ad valorem duty under the heading 'Bond, Covenant or Instrument of any kind whatsoever'[4] and the fixed duty on deeds[5], these provisions may be obsolete[6].

1 Stamp Act 1891 s 4(b): see PARA 1015 ante. Thus a lease, such as a mining lease, which reserved a fixed rent and also a varying rent which could not be ascertained would, prior to the Finance Act 1994 s 242(2), have been chargeable ad valorem on the fixed rent, and with a further duty of £2 on the varying rent: Stamp Act 1891 s 1, Sch 1, 'Lease or Tack' para (4) (amended by the Finance Act 1974 s 49(1), Sch 11 para 10(2)). See now para 1028 post. See also PARA 1054 note 1 ante.

2 Stamp Act 1891 s 77(2). Apart from this provision, a covenant in the lease to complete buildings in course of erection would have required a deed stamp (now abolished: see PARA 1002 ante) in addition to the ad valorem stamp on the rent: *Re Bolton's Lease* (1870) LR 5 Exch 82.

3 Revenue Act 1909 s 8. By s 8, the lease is then chargeable with duty for the further consideration under the Stamp Act 1891 s 4. In *British Electric Traction Co v IRC* [1902] 1 KB 441, CA, a tramway was demised at a rent, and the lessees covenanted to pay £4,000 a year for the supply of electric energy. It was held that the covenant related to the matter of the lease and did not attract further duty. The Revenue Act 1909 s 8 excludes a case of this kind from the Stamp Act 1891 s 77(2), but it does not impose further duty where there is a covenant to complete or erect buildings, even though the covenant requires the expenditure of a definite sum: (1910) 54 Sol Jo 518. As to the liability to duty on the lease of a building plot see PARA 1062 post.

4 Ie the Stamp Act 1891 Sch 1, 'Bond, Covenant or Instrument of any kind whatsoever' (as amended). As to the only remaining charge under this head see PARA 1061 post.

5 See PARA 1002 ante.

6 It would appear that the only charging provisions in force which could possibly apply to such consideration are the Stamp Act 1891 s 60 (see PARA 1042 ante) and the Finance Act 1994 s 241(1) (see PARA 1045 ante), both of which concern the conveyance on sale head of charge. Neither of these provisions, however, would seem to apply unless the subject of the covenant is itself capable of transfer, whereas the Stamp Act 1891 s 77(2) is concerned with the provision of services or a covenant to provide services. A covenant to provide services was formerly charged under the Stamp Act 1891 Sch 1, 'Bond, Covenant or Instrument of any kind whatsoever' (as amended) (see PARA 1061 post) but not under Sch 1, 'Conveyance or Transfer on Sale' (as amended) (see PARA 1027 et seq ante).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125

(amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

178 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

179 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

180 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1056 Improvements or additions by tenant**

NOTE 1--The head of charge is now simply 'Lease': Finance Act 1999 Sch 14 para 2. This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/B. AGREEMENTS FOR LEASES CHARGEABLE AS LEASES/1057. Agreements for leases.

## *B. AGREEMENTS FOR LEASES CHARGEABLE AS LEASES*

### 1057. Agreements for leases.

An agreement for a lease[1] is chargeable with the same stamp duty as if it were an actual lease made for the term and consideration mentioned in the agreement[2]. The duty chargeable on a lease, the circumstances in which the duty on a lease granted to give effect to an agreement for a lease may be reduced or extinguished to reflect the duty paid on the agreement and the circumstances in which an agreement for a lease may be stamped, without penalty, when the lease is stamped, are discussed elsewhere in this title[3]. A counterpart of an agreement requires the same stamp as the original or a 50 pence stamp, whichever is the less, but does not require a denoting stamp[4].

An attornment does not require a stamp[5] unless it amounts to an agreement for a new or different tenancy, in which case it requires to be stamped either as a lease or as an agreement for a lease[6]. Where an agreement refers to the terms of an abandoned lease, it is sufficient for the agreement only to be stamped[7], provided the lease has not been operative[8].

If there is a written agreement it must be given in evidence; the landlord cannot avoid doing so by suing for use and occupation generally[9], unless, perhaps, his own evidence does not disclose the existence of the agreement[10].

1 As to the formalities required for a valid agreement for the disposition of an interest in land see the Law of Property (Miscellaneous Provisions) Act 1989 s 2; *Commission for the New Towns v Cooper (GB) Ltd*[1995] 2 All ER 929, [1995] 2 WLR 677, CA; *Firstpost Homes Ltd v Johnson*(1995) Times, 14 August, CA; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 79.

2 Stamp Act 1891 s 75(1) (amended by the Finance Act 1984 ss 111(1), 128(6), Sch 23 Pt X). For these purposes, a lease to be granted for a fixed term and thereafter until determined is treated as a lease for a definite term equal to the fixed term together with such further period as must elapse before the earliest date at which the lease can be determined: Finance Act 1963 s 56(3). As to the stamp duty on a lease see PARAS 1054 ante, 1058 et seq post. See also PARA 1054 note 1 ante.

3 See PARAS 1054 ante, 1058 et seq post.

4 See PARA 1054 ante.

5 *Doe d Linsey v Edwards* (1836) 5 Ad & El 95; *Barry v Goodman* (1837) 2 M & W 768.

6 *Cornish v Searell* (1828) 8 B & C 471; *Doe d Frankis v Frankis* (1840) 11 Ad & El 792, where the instrument stated the rent and when it was payable; *Cooper v Lands* (1866) 14 LT 287. As to attornment see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 3.

7 *Pearce v Cheslyn* (1835) 4 Ad & El 225.

8 *Drant v Brown* (1825) 3 B & C 665; *Turner v Power* (1828) 7 B & C 625.

9 *Brewer v Palmer* (1800) 3 Esp 213. See also *Cotterill v Hobby* (1825) 4 B & C 465; and cf *Strother v Barr* (1828) 5 Bing 136.

10 *Marston v Dean* (1835) 7 C & P 13; *Fry v Chapman* (1836) 5 Dowl 265; *Watson v King* (1846) 3 CB 608.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

181 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

182 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the

transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

183 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1057 Agreements for leases**

TEXT AND NOTES 1, 2--Stamp Act 1891 s 75(1) and Finance Act 1963 s 56(3) replaced by the Finance Act 1999 Sch 13 paras 14(1), 15. This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

## *C. AD VALOREM DUTY ON RENT OR MARKET RENT*

### 1058. Duty on rent.

Where the consideration, or any part of the consideration, for the grant of a lease[1] is any rent[2], stamp duty on the rent is assessed by reference (1) to the rent or average rate of rent[3] per annum, whether the rent reserved is a yearly rent or not[4]; and (2) to the term of the lease, subject to the exceptions in favour of furnished dwellings in certain cases[5]. In the case of a definite term for less than one year, duty is charged as though the aggregate rent payable during the term was the rent per annum[6]. Where the amount of the rent can be ascertained[7], the duty payable is calculated in accordance with a scale laid down by statute[8]. Where the amount of the rent cannot be ascertained, the duty payable is calculated on the market rent[9].

1 An agreement for a lease is chargeable as a lease: see PARA 1057 ante.

2 Rent is the payment which a tenant makes for the use and occupation of land pursuant to a lease: *United Scientific Holdings Ltd v Burnley Borough Council, Cheapside Land Development Co Ltd v Messels Service Co* [1978] AC 904, [1977] 2 All ER 62, HL. It may include a mining royalty: *R v Westbrook, R v Everist* (1847) 10 QB 178; *Trustees of Tollemache Settled Estates v Coughtrie (Inspector of Taxes)*[1961] AC 880, [1961] 1 All ER 593; cf *T & E Homes Ltd v Robinson (Inspector of Taxes)* [1979] 2 All ER 522, [1979] 1 WLR 452, CA.

3 The words 'average rate' are intended to meet the case of a varying rent: *Pearson v IRC*(1868) LR 3 Exch 242.

4 Stamp Act 1891 s 1, Sch 1, 'Lease or Tack' para (3) (amended by the Finance Act 1994 s 241(5), (6)). See also PARA 1054 note 1 ante.

5 See PARA 1096 post.

6 Stamp Act 1891 Sch 1, 'Lease or Tack' para (2)(b); and see PARA 1096 post.

7 Ad valorem duty is chargeable on the rent where the amount of the rent, although not specified in the lease, is immediately ascertainable: *Parry v Deere* (1836) 5 Ad & El 551. A maximum rent calculated according to a formula based on the cost of development work has been held to be rent reserved by the lease in respect of which duty was chargeable, notwithstanding the contingent nature of the sums payable: *Coventry City Council v IRC*[1979] Ch 142, [1978] 1 All ER 1107. See also *Cummins Engine Co Ltd v IRC*[1981] STC 604; and PARAS 1012, 1019 ante.

8 Stamp Act 1891 Sch 1, 'Lease or Tack' para (3), Table (substituted by the Finance Act 1974 s 49(1), Sch 11 para 10(3); amended by the Finance Act 1980 s 95(3)(b); and by the Finance Act 1982 s 128(3)(b)). The scale is as follows:

| **Rate or average rate of annual rent** | **Term not exceeding 7 yrs or indefinite** | **Term exceeds 7 but not 35 yrs** | **Term exceeds 35 but not 100 yrs** | **Term exceeds 100 yrs** |
|---|---|---|---|---|
| up to £5 inclusive | nil | 10p | 60p | £1.20 |
| over £5 but not £10 | nil | 20p | £1.20 | £2.40 |

| | | | | |
|---|---|---|---|---|
| over £10 but not £15 | nil | 30p | £1.80 | £3.60 |
| over £15 but not £20 | nil | 40p | £2.40 | £4.80 |
| over £20 but not £25 | nil | 50p | £3 | £6 |
| over £25 but not £50 | nil | £1 | £6 | £12 |
| over £50 but not £75 | nil | £1.50 | £9 | £18 |
| over £75 but not £100 | nil | £2 | £12 | £24 |
| over £100 but not £150 | nil | £3 | £18 | £36 |
| over £150 but not £200 | nil | £4 | £24 | £48 |
| over £200 but not £250 | nil | £5 | £30 | £60 |
| over £250 but not £300 | nil | £6 | £36 | £72 |
| over £300 but not £350 | nil | £7 | £42 | £84 |
| over £350 but not £400 | nil | £8 | £48 | £96 |
| over £400 but not £450 | nil | £9 | £54 | £108 |
| over £450 but not £500 | nil | £10 | £60 | £120 |
| over £500 | 50p per £50 or part of £50 | £1 per £50 or part of £50 | £6 per £50 or part of £50 | £12 per £50 or part of £50 |

A lease for a 99-year term determinable with lives has been held to be a lease for a term which exceeds 35 years and not for an indefinite term: *Earl of Mount Edgcumbe v IRC*[1911] 2 KB 24.

9 See PARA 1059 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject

matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

184 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

185 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

186 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1058 Duty on rent**

TEXT AND NOTES--Replaced. In the case of a lease for a definite term of less than a year, duty is charged at £5 on a lease of a furnished dwelling house or furnished apartments where the rent for the term exceeds £5,000; and at the same rate as for a lease for a year at the rent reserved for the definite term on any other lease: Finance Act 1999 Sch 13 para 11 (amended by the Finance Act 2000 s 115(1)(a)). In the case of a lease of land for any other definite term, or for an indefinite term, the duty is determined as follows. (1) If the consideration or part of it moving to the lessor or to any other person consists of any money, stock, security or other property, the duty in respect of that consideration is the same as that on a conveyance on sale for the same consideration (see PARA 1027), but if part of the consideration is rent, which exceeds £600 a year, the exemption for transactions certified at under £60,000 does not apply. (2) If the consideration or part of the consideration is rent, the duty in respect of it is determined by reference to the rate or average rate of the rent (whether reserved as a yearly rent or not), as follows. Where the term is (a) not more than seven years or indefinite, (i) if the rent is £5,000 or less, the rate is nil, (ii) if the rent is more than £5,000, the rate is 1 per cent; (b) more than seven years but not more than 35 years, the rate is 2 per cent; (c) more than 35 years but not more than 100 years, the rate is 12 per cent; (d) more than 100 years, the rate is 24 per cent: Finance Act 1999 Sch 13 para 12 (amended by the Finance Act 2000 ss 115(1)(b), 116(1)). For transitional provisions relating to instruments executed on or after 1 October 1999 but before 28 March 2000 see the Finance Act 2000 s 116(2), Sch 32.

Any lease not otherwise covered is chargeable at £5: Finance Act 1999 Sch 13 para 13.

Where a lease is granted for a fixed term and thereafter until determined, it is treated as a lease for a definite term equal to the fixed term together with such further period as must elapse before the earliest date at which the lease can be determined: Sch 13 para 15(1).

The head of charge is now simply 'Lease': Sch 14 para 2.

These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122.

As currently worded, these provisions do not apply to leases of exactly seven years. Amending legislation (operative from 1 October 1999) to be included in the Finance Bill 2000 will impose a charge of 1 per cent on such leases if the rent is more than £500. Leases granted in the interim may be presented for stamping at the present rate, but if so will cease to be duly stamped when the vote on the Resolutions is taken at the end of the Budget debates in 2000, and they will need to be re-presented for stamping and

the increased duty paid. Interest and penalties will only apply if such re-presentation and payment take place more than 30 days after that date. Documents may, however, be presented for stamping at the full 1 per cent rate, thereby avoiding re-presentation, before the legislative amendments are made: Inland Revenue Press Release 17 September 1999.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/C. AD VALOREM DUTY ON RENT OR MARKET RENT/1059. Duty on market rent where rent unascertainable.

**1059. Duty on market rent where rent unascertainable.**

Where, for the purposes of stamp duty chargeable by reference to the rent[1], the rent, or any part of the rent, cannot otherwise be ascertained[2] at the time the lease is executed[3], the rent is taken to be the market rent[4] at that time[5].

1 Ie under the Stamp Act 1891 s 1, Sch 1, 'Lease or Tack' para (3) (as amended): see PARA 1058 ante. For the meaning of 'rent' see PARA 1058 note 2 ante. See also PARA 1054 note 1 ante.

2 For these purposes, the cases where rent cannot be ascertained do not include cases where the rent could be ascertained on the assumption that any future event mentioned in the instrument were or were not to occur: Finance Act 1994 s 242(3)(a). As to the circumstances in which the rent is ascertained for the purposes of the charge see PARA 1058 note 4 ante.

3 For the meaning of 'executed' see PARA 1007 note 5 ante.

4 The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market: Finance Act 1994 s 242(3)(b).

5 Ibid s 242(2). Section 242 applies to instruments executed after 7 December 1993: s 242(4).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

187 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the

consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

188 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

189 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

## 1059 Duty on market rent where rent unascertainable

NOTE 1--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 para 12. The head of charge is now simply 'Lease': Sch 14 paras 2, 31. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/C. AD VALOREM DUTY ON RENT OR MARKET RENT/1060. Penal rents.

**1060. Penal rents.**

A lease or agreement for a lease requires no further stamp in respect of a penal rent, or increased rent in the nature of a penal rent, reserved or made payable under it[1].

1 Stamp Act 1891 s 77(1). See also PARA 1054 note 1 ante. As to the nature of penal rents see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 251.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

190 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

191 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection

with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

192 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1061. Instruments increasing rent.**

An instrument by which the rent reserved by a duly stamped lease is increased is chargeable as a lease in consideration of the additional rent[1]. In any other case, however, the instrument will be chargeable at a higher rate under the head of charge 'Bond, Covenant, or Instrument of any kind whatsoever'[2]. Duty under this head has otherwise been abolished[3].

If an instrument increasing the rent reserved by another instrument is the only, principal or primary security[4] for payments at stated periods not themselves being rent reserved by a lease[5], and is for a definite and certain period so that the total amount ultimately payable is ascertainable[6], the instrument attracts duty at the same ad valorem rate as on a bond or covenant for the same total amount[7]. A period fixed by such an instrument is definite and certain notwithstanding that it may be shortened or lengthened in certain events[8]. The total amount must be ascertainable at the date of execution, but the possibility of increase or decrease in certain contingencies does not prevent duty from being charged on the primary amount[9].

If the term of an instrument increasing rent[10] is for life or any other indefinite period the instrument falls within the second part of the first paragraph of the head of charge and attracts duty of 10 pence for every £5 (or part of £5) of the periodical sum[11]. This duty is normally calculated on a single individual payment[12], but, where the instrument secures an annual amount payable in instalments, duty is calculated on the aggregate annual amount[13]; and similarly in the case of an undertaking to pay a stated sum every three months by quarterly payments on the usual quarter days[14].

Where such an instrument is a collateral, auxiliary, additional or substituted security for the increase of rent (in a case where the principal instrument is duly stamped[15]) and the total amount ultimately payable is ascertainable, then the collateral or other instrument attracts the same duty as a bond or covenant of the same kind for that total amount[16], with a maximum of 50 pence[17]. If the total amount ultimately payable is not ascertainable, the duty is 5 pence for every £10 or part of £10, with no maximum[18].

1 Stamp Act 1891 s 77(5). See also PARA 1054 note 1 ante. A deed of variation increasing the rent upon a subsisting lease is relieved from duty under s 1, Sch 1, 'Bond, Covenant or Instrument of any kind whatsoever' (as amended) by s 77(5), but is chargeable under Sch 1, 'Lease or Tack' (as amended): see *Gable Construction Co Ltd v IRC* [1968] 2 All ER 968, [1968] 1 WLR 1426. For the meaning of 'instrument' see PARA 1001 ante.

2 See the Stamp Act 1891 Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' paras (1), (2) (as amended); and the text and notes 3-18 infra.

3 With this exception, duty under ibid Sch 1, 'Bond, Covenant or Instrument of any kind whatsoever' paras (1), (2) (as amended), was abolished as from 1 August 1971 by the Finance Act 1971 s 64(1)(a). Instruments within the exception continue to be chargeable under this head subject to the Stamp Act 1891 s 77(5): see the text and note 1 supra. Duty under Sch 1, 'Bond, Covenant or Instrument of any kind whatsoever' para (3) was abolished by the Finance Act 1989 ss 173(1)(b), (2), (6), 187(1), Sch 17 Pt IX, as respects instruments executed after 31 December 1989. For the meaning of 'executed' see PARA 1007 note 5 ante.

4 To be a security the instrument must embody a contractual obligation (*Jones v IRC* [1895] 1 QB 484 at 492, DC; *National Telephone Co Ltd v IRC* [1899] 1 QB 250 at 259, CA; contrast *Kennedy v IRC* (1900) 65 JP 9, DC), but need not be under seal (*National Telephone Co Ltd v IRC* supra; affd [1900] AC 1, HL). An agreement may be within the charge notwithstanding that it is executory: *Independent Television Authority and Associated Rediffusion Ltd v IRC* [1961] AC 427, [1960] 2 All ER 481, HL. In determining for this purpose whether an

instrument is the only, principal or primary security, no account is to be taken of any other instrument which is a security for the same annuity, sum or sums, or for any part of it, unless that other instrument is chargeable with the same duty under the Stamp Act 1891 Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' (as amended), and is duly stamped: Finance Act 1963 s 63(a).

5 Ie a lease (or sub-lease) of real property: *Jones v IRC* [1895] 1 QB 484 at 492-493, DC. As to the duty on leases see PARA 1054 et seq post.

6 *Independent Television Authority and Associated Rediffusion Ltd v IRC* [1961] AC 427, [1960] 2 All ER 481, HL.

7 Stamp Act 1891 Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' para (1), first part. The rate of duty is 5p per £50 or part of £50 of an amount not exceeding £300, and 10p per £100 or part of £100 of an amount exceeding £300: Sch 1, 'Mortgage, Bond, Debenture, Covenant' para (1) (amended by the Finance Act 1970 s 32(b), Sch 7 para 16(2); and by the Finance Act 1971 s 64(1)(c), (3)).

8 *Jones v IRC* [1895] 1 QB 484, DC; *Independent Television Authority and Associated Rediffusion Ltd v IRC* [1961] AC 427, [1960] 2 All ER 481, HL.

9 *Independent Television Authority and Associated Rediffusion Ltd v IRC* [1961] AC 427, [1960] 2 All ER 481, HL. Cf *Underground Electric Rlys Co of London Ltd v IRC* [1905] 1 KB 174, CA (affd [1906] AC 21, HL); *Underground Electric Rlys Co of London Ltd and Glyn, Mills, Currie & Co v IRC* [1914] 3 KB 210 (affd [1916] 1 KB 306, CA).

10 Ie an instrument which increases the rent reserved by another instrument.

11 Stamp Act 1891 Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' para (1), second part (amended by the Finance Act 1970 Sch 7 para 7(2)).

12 *Clifford v IRC* [1896] 2 QB 187, DC (weekly sum); *Hennell v IRC* [1933] 1 KB 415, CA (monthly sum).

13 *Sweetmeat Automatic Delivery Co v IRC* [1895] 1 QB 484, DC (quarterly instalments); *Underground Electric Rlys Co of London Ltd and Glyn, Mills, Currie & Co v IRC* [1916] 1 KB 306, CA (half-yearly instalments).

14 *Lewis v IRC* [1898] 2 QB 290, DC.

15 'Duly stamped' here would appear to mean duly stamped under the Stamp Act 1891 Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' para (1) (as amended: see notes 7, 11 supra).

16 Ie 5p for every £200: ibid Sch 1, 'Mortgage, Bond, Debenture, Covenant' para (2) (amended by the Finance Act 1970 Sch 7 para 16(3); and by the Finance Act 1971 s 64(1)(c), (3)).

17 Stamp Act 1891 Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' para (2), first part; Revenue Act 1903 s 7.

18 Stamp Act 1891 Sch 1, 'Bond, Covenant, or Instrument of any kind whatsoever' para (2), second part (amended by the Finance Act 1970 Sch 7 para 7(3)).

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

193 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

194 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

195 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1061  Instruments increasing rent**

TEXT AND NOTES 1-7--Replaced. An instrument (not itself a lease) by which it is agreed that the rent reserved by a lease should be increased, or which confirms or records any such agreement made otherwise than in writing, is chargeable with the same duty (see PARA 1058) as if it were a lease in consideration of the additional rent made payable by it: Finance Act 1999 Sch 13 para 20(1). This provision does not apply to an instrument giving effect to a provision in the lease for periodic review of the rent reserved by it: Sch 13 para 20(2). The head of charge is now simply 'Lease': Sch 14 para 2. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

NOTE 4--Finance Act 1963 s 63(a) repealed except in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 Sch 20 Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/D. AD VALOREM DUTY ON PREMIUM OR MARKET VALUE/1062. Duty on premium.

## *D. AD VALOREM DUTY ON PREMIUM OR MARKET VALUE*

### 1062. Duty on premium.

Where the consideration for the lease[1] consists wholly or partly of money[2], stock[3], securities or other property[4], the stamp in respect of that consideration is the same as on a conveyance on sale for the same consideration[5]. Where, for instruments executed on or after 23 March 1993, the rent does not exceed £600, the value of the consideration does not exceed £60,000 and the lease is certified in a particular manner, no duty is payable[6].

It is immaterial whether the sum is payable to the landlord or to some other person, for example where the price of a house already erected is payable to a builder and the ground rent only is payable to the landlord[7]. On a contract for the lease of a building plot, any sum paid for a building erected or partly erected by the landlord is part of the consideration and is dutiable[8]; but, if a tenant is entitled to a lease in consideration only of the ground rent, ad valorem duty is payable only on that rent even though the tenant has agreed that a house is to be built at his expense[9].

Where the amount or value of the consideration for the lease cannot be ascertained at the time the instrument is executed, duty is chargeable by reference to the market value of the lease[10].

A lease is not chargeable by reason of being made in consideration of the surrender or abandonment of any existing lease or agreement for lease relating to the same subject matter[11]. An agreement for the surrender of a lease may, however, in certain circumstances be chargeable as a conveyance on sale[12].

1 An agreement for lease is chargeable as a lease: see PARA 1057 ante.

2 For the meaning of 'money' see PARA 1021 note 7 ante. The premium is the consideration for the grant of the lease as distinguished from the rent payable for use and occupation of the premises: see PARA 1058 note 1 ante.

3 For the meaning of 'stock' see PARA 1029 note 4 ante. As to the duty chargeable where the consideration consists of stock see PARA 1044 ante.

4 As to the duty chargeable where the consideration for the grant of a lease consists of property by reference to which ad valorem duty is not otherwise chargeable see PARAS 1045, 1056 note 6 ante.

5 Stamp Act 1891 s 1, Sch 1, 'Lease or Tack' para (3) (amended by the Finance Act 1994 s 241(5) in respect of instruments executed after 7 December 1993, not being instruments executed in pursuance of a contract made before 30 November 1993: s 241(6)), applying the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended). As to the duty chargeable on a conveyance on sale see PARA 1111 ante. As to consideration by way of periodical payments see PARA 1035 ante. For the meaning of 'instrument' see PARA 1001 ante; and for the meaning of 'executed' see PARA 1007 note 5 ante. See also PARA 1054 note 1 ante.

6 See the Finance Act 1963 s 55(1) (as amended); and PARA 1044 ante; and s 55(2) (amended by the Finance Act 1993 s 201(1) in respect of instruments (1) executed on or after 16 March 1993 and before 23 March 1993 and not stamped before 23 March 1993; or (2) executed on or after 23 March 1993: s 201(2)). There is a penalty for failure to state the true consideration with intent to defraud the revenue: see the Stamp Act 1891 s 5; and PARA 1007 ante. Formerly, a tenant could recover a premium which he had paid but which was not expressed in the lease: see *Gingell v Purkins*(1850) 4 Exch 720.

7 *A-G v Brown*(1849) 3 Exch 662, where a lease agreed to be granted to a builder was, at his direction, granted to the purchaser of the house.

8 *M'Innes v Inland Revenue*1934 SC 424 (conveyance on sale).

9 *Kimbers & Co v IRC*[1936] 1 KB 132 (contract by a builder to build a house for purchaser of land expressed to be conditional on the completion of a simultaneous contract for the sale of the land by the builder; ad valorem duty held payable only on the price of the land). As to ad valorem duty on the value of improvements see PARA 1056 ante.

10 See PARA 1059 post.

11 Stamp Act 1891 s 77(1).

12 See PARA 1064 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

196 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

197 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the

relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

198 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1062 Duty on premium**

NOTE 5--The head of charge is now simply 'Lease': Finance Act 1999 Sch 14 para 2. This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122.

NOTE 6--Finance Act 1963 s 55 repealed, except in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20 Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/D. AD VALOREM DUTY ON PREMIUM OR MARKET VALUE/1063. Duty on market value of lease where premium unascertainable.

**1063. Duty on market value of lease where premium unascertainable.**

Where, for the purposes of stamp duty chargeable on the consideration for a lease by reference to the heading 'Conveyance or Transfer on Sale'[1], the consideration[2], or any part of the consideration, for the grant of any lease cannot otherwise be ascertained[3] at the time the instrument is executed[4], the consideration for the grant is taken to be the market value[5] immediately before the instrument is executed of the lease granted[6].

1 Ie the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended), by reference to which the consideration for a lease is chargeable under Sch 1, 'Lease or Tack' para (3) (as amended): see PARA 1062 ante. See also PARA 1054 note 1 ante.

2 Where duty is chargeable under the conveyance on sale head of charge, references to consideration would appear to be to the amount or value of the consideration given or agreed to be given, by reference to which ad valorem duty is calculated under the Finance Act 1963 s 55(1) (as amended): see PARA 1027 ante.

3 For these purposes, the cases where consideration cannot be ascertained do not include cases where the consideration could be ascertained on the assumption that any future event mentioned in the instrument were or were not to occur: Finance Act 1994 s 242(3)(a). As to the circumstances in which the consideration is ascertained for the purposes of the charge see PARAS 1019, 1034 ante.

4 For the meaning of 'instrument' see PARA 1001 ante; and for the meaning of 'executed' see PARA 1007 note 5 ante (definitions applied by virtue of ibid s 257(3)).

5 For these purposes, the market value of property at any time is the price which that property might reasonably be expected to fetch on a sale at that time in the open market: ibid s 241(2) (applied by virtue of s 242(3)).

6 Ibid s 242(1). Section 242 applies to instruments executed after 7 December 1993: s 242(4).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

199 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

200 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

201 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1063 Duty on market value of lease where premium unascertainable

NOTE 1--Stamp Act 1891 Sch 1 now Finance Act 1999 Sch 13 Pt I (paras 1-9). The head of charge is now simply 'Lease': Sch 14 para 31. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

NOTE 2--Finance Act 1963 s 55 repealed, except in relation to instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20, Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/E. AGREEMENTS TO SURRENDER LEASES/1064. Agreements to surrender leases.

## *E. AGREEMENTS TO SURRENDER LEASES*

### 1064. Agreements to surrender leases.

Where, in pursuance of any agreement[1], any lease is surrendered at any time otherwise than by deed, the agreement is to be treated for the purposes of stamp duty as if it were a deed executed at that time effecting the surrender[2]. If, therefore, consideration is given for the surrender and the consideration is of a kind by reference to which the instrument is chargeable as a conveyance on sale[3], ad valorem duty will be imposed on the agreement[4]. In any other case, the agreement is liable to fixed duty of 50 pence[5].

1 As to the formalities required for a valid agreement for the disposition of an interest in land see the Law of Property (Miscellaneous Provisions) Act 1989 s 2; *Commission for the New Towns v Cooper (GB) Ltd*[1995] 2 All ER 929, CA; *Firstpost Homes Ltd v Johnson*(1995) Times, 14 August, CA; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 79.

2 Finance Act 1994 s 243(1). Section 243 applies to any agreement made after 7 December 1993: s 243(2).

3 As to the consideration by reference to which a conveyance is chargeable with ad valorem duty see PARA 1031 ante.

4 As to the duty chargeable on a conveyance on sale see PARA 1027 ante.

5 Ie under the Stamp Act 1891 s 1, Sch 1, 'Surrender' (as amended): see PARA 1081 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

202 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable

interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

203 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

204 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a

duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1064 Agreements to surrender leases

TEXT AND NOTES--These provisions (as amended: see infra) do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20 Pt V(2).

As to surrenders of leases see the Finance Act 2000 s 128; and PARA 1064A.

NOTE 2--See also the Finance Act 1999 Sch 14 para 32.

TEXT AND NOTE 5--Stamp Act 1891 Sch 1 replaced by the Finance Act 1999 Sch 13 Pt I (paras 1-9). The duty is increased to £5: see Sch 13 para 13.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(ii) Leases and Agreements for Leases/E. AGREEMENTS TO SURRENDER LEASES/1064A. Surrenders of leases.

**1064A. Surrenders of leases.**

Where a lease is or has been surrendered at any time, a document evidencing the surrender or renunciation is treated for the purposes of stamp duty as if it were a deed executed at that time effecting the surrender or renunciation[1]. However, stamp duty is not so chargeable (1) on any lease or agreement for a lease or with respect to any letting if the lease or agreement is made in consideration of the surrender or renunciation and relates to the same subject matter as the lease surrendered or renounced; or (2) on any document if a specified document has been duly stamped[2].

1 Finance Act 2000 s 128(1). Stamp duty is so chargeable on a document containing a statutory declaration, notwithstanding anything in the Land Registration Rules 1925, SI 1925/1093, r 316(1) or any other provision of those Rules or of any other rules (whenever made) under the Land Registration Act 1925 s 144 (see LAND REGISTRATION): Finance Act 2000 s 128(2). The documents which evidence the surrender or renunciation of a lease include an application, in consequence of the surrender or renunciation, for the making in, or removal from, a land register of an entry relating to the lease; and 'land register' means the register kept under the Land Registration Act 1925: Finance Act 2000 s 128(7), (8).

2 Ibid s 128(3), (4). The specified documents are (1) a deed effecting the surrender or renunciation; (2) an agreement which falls to be treated for the purposes of stamp duty as if it were such a deed; (3) any document which falls to be so treated under these provisions; and (4) any lease or agreement falling within head (1) of the TEXT: Finance Act 2000 s 128(5). A land registrar must regard a document which is not chargeable to stamp duty under these provisions by virtue of head (2) of the TEXT as not duly stamped unless (a) it is stamped as if it were a deed affecting the surrender or renunciation; or (b) it appears by some stamp impressed on it that the full and proper duty chargeable on such a deed has been paid on another document; or (c) it appears by some stamp impressed on it that a lease or agreement falling within head (1) of the TEXT has been duly stamped; or (d) he is aware of a specified document that has been duly stamped: s 128(6). 'Land registrar' means the Chief Land Registrar or any other officer of Her Majesty's Land Registry exercising functions of the Chief Land Registrar: s 128(8).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

205 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

206 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

207 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(iii). Bearer Instruments, Depositary Receipts and Clearance Services/A. INTRODUCTION/1065. The higher rate charges.

## (iii). Bearer Instruments, Depositary Receipts and Clearance Services

### *A. INTRODUCTION*

#### 1065. The higher rate charges.

Stamp duty of £1.50 per £100 or part of £100 of the value of securities or the amount or value of the consideration for securities[1] is imposed on the issue of instruments[2] or the transfer of securities into systems which allow the beneficial interest in the securities to be transferred thereafter without the need to create an instrument of transfer on which stamp duty would be payable[3]. It seems, therefore, that the higher rate charge is imposed initially to compensate for the loss of ad valorem conveyance on sale duty on subsequent transfers[4].

There are various exemptions which ensure that stamp duty reserve tax[5] is not imposed where stamp duty is chargeable[6]. To the extent that stamp duty reserve tax is imposed in respect of the issue of depositary receipts[7] and transfers into clearance systems[8], the tax is imposed at the same higher rate as stamp duty[9].

1 Ie three times the duty chargeable in respect of transfers on sale of stock or marketable securities: see PARA 1044 ante.

2 For the meaning of 'instrument' see PARA 1001 ante.

3 Stamp duty is a charge on instruments, not transactions: see PARA 1001 ante.

4 As to the ad valorem duty on a conveyance on sale see PARA 1027 et seq ante.

5 As to stamp duty reserve tax see PARA 1118 et seq post; and as to its prospective abolition see PARA 1119 post.

6 As to the exceptions from the higher rate charge to stamp duty reserve tax see PARAS 1130-1131 post.

7 See PARA 1122 post.

8 See PARA 1123 post.

9 See PARAS 1122-1123 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of

an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

208 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

209 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

210 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1065  The higher rate charges**

TEXT AND NOTES--Replaced. Stamp duty is now chargeable on the issue of a bearer instrument (see PARA 1066) in the United Kingdom, and on the issue of a bearer instrument outside the United Kingdom by or on behalf of a UK company, at the rate of 1·5 per cent of the market value of the stock constituted by, or transferable by means of, the instrument: Finance Act 1999 Sch 15 paras 1, 4. If a bearer instrument was not charged to duty on its issue, stamp duty is chargeable on the transfer in the United Kingdom of the stock constituted by or transferable by means of that instrument if (1) duty would be chargeable under Sch 13 para 1 (conveyance or transfer on sale) if the transfer were effected by an instrument other than a bearer instrument, or (2) the stock constituted by or transferable by means of a bearer instrument consists of units under a unit trust scheme: Sch 15 para 2.

'Company' includes any body of persons, corporate or unincorporate, and 'UK company' means (a) a company that is formed or established in the United Kingdom (other than a European company which has its registered office outside the United Kingdom following a transfer in accordance with EC Council Regulation 2157/2001, on the Statute for a European Company, art 8); or (b) a European company which has its registered office in the United Kingdom following a transfer in accordance with art 8: Finance Act 1999 Sch 15 para 11 (amended by Finance (No 2) Act 2005 s 58(2)). 'Stock' includes securities and any interest in, or in any fraction of, stock or in any dividends or other rights arising out of stock and any right to an allotment of, or to subscribe for, stock: Finance Act 1999 Sch 15 para 12(1), (2). 'Transfer' includes negotiation, and related expressions are construed accordingly: Sch 15 para 12(3).

The higher rate does not apply in the case of a deposit certificate (see PARA 1066) in respect of stock of a single non-UK company, or of an instrument issued by a non-United Kingdom company that is a bearer instrument by usage (and is not otherwise within the definition of 'bearer instrument' in PARA 1066 below), when duty is charged at the rate of 0·2 per cent of the market value of the stock constituted by or transferable by means of the instrument: Sch 15 para 5.

For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(iii). Bearer Instruments, Depositary Receipts and Clearance Services/B. BEARER INSTRUMENTS/1066. Inland bearer instruments.

## *B. BEARER INSTRUMENTS*

### 1066. Inland bearer instruments.

'Inland bearer instrument' means any of the following instruments[1] issued by or on behalf of a company or body of persons corporate or unincorporate formed or established in the United Kingdom[2]:

62 (1) any marketable security[3] transferable[4] by delivery[5];
63 (2) any share warrant or stock certificate to bearer and any instrument to bearer (by whatever name called) having the like effect as such a warrant or certificate[6];
64 (3) any deposit certificate[7] to bearer[8];
65 (4) any other instrument to bearer by means of which stock can be transferred[9].

Subject to certain exemptions[10], stamp duty of an amount equal to three times the transfer duty[11] is charged on an inland bearer instrument, other than a deposit certificate for overseas stock[12], and duty of 10 pence for every £50 or part of £50 of the market value is charged on such a deposit certificate[13]. Duty of 10 pence is charged on an inland bearer instrument given in substitution for a like instrument duly stamped ad valorem, whether as a bearer instrument[14] or not[15]. The cancellation of certain bearer instruments is required where the holder is registered as the owner of the share or stock[16].

1 For the meaning of 'instrument' see PARA 1001 ante. That definition, and the definitions of 'marketable security' (see PARA 1029 note 5 ante) and 'stock' (see PARA 1029 note 4 ante), apply by virtue of the Finance Act 1963 s 73(4). As to the prospective abolition of stamp duty on bearer instruments see PARA 1004 ante. As to stock see further note 5 infra. The Finance Act 1963 s 59(1)-(4) (as amended: see the text and notes 2-15 infra) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

2 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

3 The statutory definition of 'marketable security' (see note 1 supra) was originally excluded by the Finance Act 1963 s 59(2), but the exclusion was repealed by the Finance Act 1973 s 59(7), Sch 22 Pt V.

4 'Transfer' includes negotiation, and 'transferable', 'transferred' and 'transferring' are to be construed accordingly: Finance Act 1963 s 59(4).

5 Ibid s 59(2)(a)(i). A bearer instrument by usage used for the purpose of transferring the right to any stock is to be treated as transferring that stock on delivery of the instrument, and as issued by the person by whom or on whose behalf it was first issued, whether or not it was then capable of being used for transferring the right to the stock without execution by the holder: s 59(4). 'Bearer instrument by usage' means an instrument not described in heads (1)-(4) in the text which is used for the purpose of transferring the right to any stock, being an instrument delivery of which is treated by usage as sufficient for the purpose of a sale on the market, whether that delivery constitutes a legal transfer or not: s 59(2)(d). For these purposes, and for the purposes of ss 60, 61 (see PARAS 1068-1069 post), 'stock' includes securities and references to stock include references to any interest in, or in any fraction of, stock or in any dividends or other rights arising out of stock and any right to an allotment of or to subscribe for stock: s 59(4). See also note 1 supra.

6 Ibid s 59(2)(a)(ii).

7 'Deposit certificate' means an instrument acknowledging the deposit of stock and entitling the bearer to rights, whether expressed as units or otherwise, in or in relation to the stock deposited or equivalent stock: ibid s 59(2)(c).

8 Ibid s 59(2)(a)(iii).

9 Ibid s 59(2)(a)(iv).

10 For the exemptions see PARA 1098 post.

11 'The transfer duty' means the duty which would be chargeable under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' in respect of a written instrument transferring the stock constituted by or transferable by means of the inland (or overseas) bearer instrument in question for a consideration equal to the market value of that stock and the instrument so postulated is taken to transfer the stock on the day of issue or transfer, depending on whether the Finance Act 1963 s 60(1) or (2) applies, and to be executed in pursuance of a contract made on that day: Finance Act 1963 s 59(3) (amended by the Finance Act 1986 s 65(2)). The transfer duty for stock is 50p per £100 or part of £100 of the consideration (see PARA 1029 ante); duty on bearer instruments is therefore £1.50 per £100 or part of £100 of the market value of the stock. As to the justification for the higher rate charge see PARA 1065 ante. As to the market value see PARA 1069 post. For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of the Finance Act 1963 s 73(4)). For the meaning of 'overseas bearer instrument' see PARA 1067 post.

12 Stamp Act 1891 Sch 1, 'Bearer Instrument' para (1) (added by the Finance Act 1963 s 59(1)). The Stamp Act 1891 Sch 1, 'Bearer Instrument' (as added and amended) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day. 'Deposit certificate for overseas stock' means a deposit certificate in respect of stock of any one company or body of persons not being a company or body of persons corporate or unincorporate formed or established in the United Kingdom: Finance Act 1963 s 59(2)(c).

13 Stamp Act 1891 Sch 1, 'Bearer Instrument' para (3) (added by the Finance Act 1963 s 59(1); amended by the Finance Act 1970 s 32(b), Sch 7 para 6(2); and by the Finance Act 1974 s 49(1), Sch 11 para 2(2)).

14 Ie under the Stamp Act 1891 Sch 1, 'Bearer Instrument' (as added and amended).

15 Ibid Sch 1, 'Bearer Instrument' para (4) (added by the Finance Act 1963 s 59(1); amended by the Finance Act 1970 Sch 7 para 6(3); and by the Finance Act 1974 Sch 11 para 2(3)).

16 See the Stamp Act 1891 s 109(1). This applies to stock certificates to bearer (s 109(1)), including units under a unit trust scheme (see the Finance Act 1946 s 56(2)), and also to any instrument to bearer issued by a company which has the same effect as such a certificate (Finance Act 1899 s 5(2) (amended by the Finance Act 1963 s 73(8)(b), Sch 14 Pt IV)). The Stamp Act 1891 s 109(1), the Finance Act 1946 s 56(2) and the Finance Act 1899 s 5(2) (as so amended) will not apply where the stock certificate or other instrument is entered on or after the abolition day (Finance Act 1990 s 109(2)); and those provisions are prospectively repealed as from that day by s 132, Sch 19 Pt VI.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

211 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

212 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

213 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1066  Inland bearer instruments**

TEXT AND NOTES--Replaced. 'Bearer instrument' means (1) a marketable security transferable by delivery; (2) a share warrant or stock certificate to bearer or instrument to bearer (by whatever name called) having the like effect as such a warrant or certificate; (3) a deposit certificate to bearer; (4) any other instrument to bearer by means of which stock (see PARA 1065) can be transferred; or (5) an instrument issued by a non-UK company (ie a company that is not a UK company (for the meaning of 'UK company' see PARA 1065) that is a bearer instrument by usage: Finance Act 1999 Sch 15 paras 3, 11. A 'deposit certificate' is an instrument acknowledging the deposit of stock and entitling the bearer to rights (whether expressed as units or otherwise) in or in relation to the stock deposited or equivalent stock: Sch 15 para 9. A 'bearer instrument by usage' is an instrument which is used for the purpose of transferring the right to stock, and delivery of which is treated by usage as sufficient for the purposes of a sale on the market, whether that delivery constitutes a legal transfer or not: Sch 15 para 10(1). Such an instrument is treated as transferring the stock on delivery of the instrument and as issued by the person by whom or on whose behalf it was first issued, whether or not it was then capable of being used for transferring the right to the stock without execution by the holder: Sch 15 para 10(2).

For savings in relation to instruments relating to units under unit trust schemes see Sch 20 Pt V(2). For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

**1067. Overseas bearer instruments.**

'Overseas bearer instrument' means an instrument[1] issued otherwise than by or on behalf of any company or body of persons corporate or unincorporate formed or established in the United Kingdom[2], being an instrument described in heads (1) to (4) in the preceding paragraph[3] or a bearer instrument by usage[4]. Subject to certain exemptions[5], stamp duty of an amount equal to three times the transfer duty[6] is charged on an overseas bearer instrument, other than a deposit certificate for overseas stock[7] or a bearer instrument by usage[8], and duty of 10 pence for every £50 or part of £50 of the market value is charged on such a deposit certificate or bearer instrument by usage[9]. Duty of 10 pence is charged on an overseas bearer instrument given in substitution for a like instrument duly stamped ad valorem, whether as a bearer instrument[10] or not[11].

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1963 s 73(4)).

2 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

3 See the Finance Act 1963 s 59(2)(a)(i)-(iv); and PARA 1066 ante.

4 Ibid s 59(2)(b). For the meaning of 'bearer instrument by usage' see PARA 1066 note 5 ante. As to the prospective repeal of s 59(2) see PARA 1066 note 1 ante.

5 As to the exemptions see PARA 1098 post.

6 For the meaning of 'the transfer duty' see PARA 1066 note 11 ante.

7 For the meaning of 'deposit certificate for overseas stock' see PARA 1066 note 12 ante; and for the meaning of 'stock' see PARAS 1029 note 4, 1066 note 5 ante.

8 Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' para (2) (added by the Finance Act 1963 s 59(1); amended by the Finance Act 1986 s 65(1)). As to the prospective repeal of the Stamp Act 1891 Sch 1, 'Bearer Instrument' (as amended) see PARA 1066 note 12 ante.

9 Stamp Act 1891 Sch 1, 'Bearer Instrument' para (3) (added by the Finance Act 1963 s 59(1); amended by the Finance Act 1970 s 32(b), Sch 7 para 6(2); and by the Finance Act 1974 s 49(1), Sch 11 para 2(2)).

10 Ie under the Stamp Act 1891 Sch 1, 'Bearer Instrument' (as added, amended and prospectively repealed: see PARA 1066 note 12 ante).

11 Ibid Sch 1, 'Bearer Instrument' para (4) (added by the Finance Act 1963 s 59(1); amended by the Finance Act 1970 Sch 7 para 6(3); and by the Finance Act 1974 Sch 11 para 2(3)).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s

125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

214 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

215 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

216 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely

on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1067 Overseas bearer instruments**

TEXT AND NOTES 1-7--Replaced. See now Finance Act 1999 Sch 15 para 1; and PARA 1065.

**1068. Payment of duty on bearer instruments.**

In the case of a bearer instrument issued in Great Britain[1] or issued by or on behalf of any company or body of persons corporate or unincorporate formed or established in Great Britain, not being a foreign loan security[2], stamp duty[3] is charged on the issue[4]. In the case of any other bearer instrument the duty is chargeable on transfer in Great Britain of the stock[5] constituted by or transferable[6] by means of the instrument[7].

An instrument chargeable with duty on issue must before issue be produced[8] to the Commissioners of Inland Revenue and will be deemed to be duly stamped if and only if it is stamped with a particular stamp denoting that it has been so produced[9]. Within six weeks of the date on which the instrument is issued, a written statement containing the date of issue and such further particulars as the commissioners may require must be delivered to them and the duty chargeable in respect of that instrument must be paid on delivery of that statement[10].

Where any instrument which is chargeable with duty on transfer of the stock constituted by or transferable by means of the instrument is presented to the commissioners for stamping, the person presenting it and its owner must furnish to the commissioners such written particulars as they may require for determining the amount of duty chargeable on that instrument[11]. When any such instrument has been stamped ad valorem or with a stamp indicating that it is chargeable as a bearer instrument given in substitution for a like instrument duly stamped ad valorem[12], it is deemed for all purposes (other than for the purposes of the offence relating to false particulars[13]) to have been duly stamped[14].

1 Finance Act 1963 s 60(1)(a). For the meaning of 'Great Britain' see PARA 1007 note 6 ante.

2 Ibid s 60(1)(b). 'Foreign loan security' means a security issued outside the United Kingdom in respect of a loan expressed in a currency other than sterling and which is neither offered for subscription in the United Kingdom nor offered for subscription with a view to an offer for sale in the United Kingdom of securities in respect of the loan: s 60(1). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

3 Ie under the Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' (as added, amended and prospectively repealed): see PARAS 1066-1067 ante.

4 Finance Act 1963 s 60(1). Section 60 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

5 As to the meaning of 'stock' see PARAS 1029 note 4, 1066 note 9 ante.

6 For the meaning of 'transferable' see PARA 1066 note 4 ante.

7 Finance Act 1963 s 60(2). However, duty so chargeable on the transfer of stock is chargeable only where duty would be chargeable as a transfer on sale under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended) (see PARA 1027 ante) if the transfer were effected by an instrument which is not a bearer instrument: Finance Act 1963 s 60(2) proviso. For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of s 73(4)).

8 Such written particulars as the commissioners may require must be produced at the same time: ibid s 60(3). A person who wilfully or negligently furnishes particulars under s 60 which are false in any material respect is liable to a fine not exceeding the aggregate of £50 and an amount equal to twice the amount by which the duty which ought to be charged exceeds the duty paid: s 60(7). As to the recovery of fines see PARA 1117 post.

9 Ibid s 60(3). As to the reciprocal recognition of stamping between Great Britain and Northern Ireland see s 60(9). For the meaning of 'Great Britain' see PARA 1007 note 6 ante.

10 Ibid s 60(3). The commissioners may allow a longer time for the delivery of the statement or for the payment of the duty: s 60(3). If default is made in complying with s 60(3) in respect of any instrument, the person by whom or on whose behalf the instrument is issued and any agent of that person for the purposes of the issue are liable to a fine not exceeding the aggregate of £50 and the amount of duty chargeable and are liable to pay to Her Majesty the duty chargeable in respect of that instrument with interest at the rate of 5% per annum from the date of the default: s 60(4). Where an overseas bearer instrument in respect of a loan expressed in sterling has been stamped ad valorem, or with the denoting stamp referred to in s 60(3), or with the duty under the Stamp Act 1891 Sch 1, 'Bearer Instrument' para (4) (as added, amended and prospectively repealed) (see PARA 1067 text to note 11 ante), duty will not be charged under that head by reason only that the instrument is amended on its face pursuant to an agreement for the variation of any of its original terms or conditions: Finance Act 1970 s 32(b), Sch 7 para 6(4). Schedule 7 para 6 is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

11 Finance Act 1963 s 60(5). See also s 60(7); and note 8 supra. Any person who in Great Britain transfers, or is concerned as broker or agent in transferring, any stock by or by means of such an instrument is, if it is not duly stamped, liable to a fine not exceeding the aggregate of £50 and an amount equal to the stamp duty chargeable in respect of that instrument and is liable to pay to Her Majesty the duty chargeable in respect of that instrument with interest at the rate of 5% per annum from the date of the transfer in question: s 60(6).

12 Ie under the Stamp Act 1891 Sch 1, 'Bearer Instrument' para (4) (as added, amended and prospectively repealed): see PARAS 1066-1067 ante.

13 Ie for the purposes of the Finance Act 1963 s 60(7): see note 8 supra.

14 Ibid s 60(8). As to the reciprocal recognition of stamping between Great Britain and Northern Ireland see s 60(9).

## UPDATE

## 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

217 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual

consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

218 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

219 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1068 Payment of duty on bearer instruments**

TEXT AND NOTES--Finance Act 1963 s 60 repealed, except in relation to instruments relating to units under unit trusts: Finance Act 1999 Sch 20 Pt V(2).

TEXT AND NOTES 8-14--Finance Act 1963 s 60 replaced by Finance Act 1999 Sch 15 paras 21-23. The fine is increased to £300 plus the amount of duty payable, and interest is due at the rate for the time being prescribed under the Finance Act 1989 s 178 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1813) for the purposes of the Stamp Act 1891 s 15A (see PARA 1020): Finance Act 1999 Sch 15 para 24(3). If an amount is lodged with the Commissioners of Inland Revenue in respect of the duty, the amount on which duty is payable is reduced by that amount. Any interest payable is rounded down (if necessary) to the nearest £5, and no interest is payable if the amount is less than £25: Sch 15 para 24(4). Such interest is payable without deduction of income tax and is not taken into account in computing income or profits for any tax purpose: Sch 15 para 24(5).

Finance Act 1970 s 32(b), Sch 7 replaced. Where a bearer instrument issued by or on behalf of a non-UK company (see PARA 1066) in respect of loan expressed in sterling, which has been stamped (1) ad valorem, or (2) in accordance with the Finance Act 1999 Sch 15 para 12A (see PARA 1098), or (3) with the denoting stamp referred to in Sch 15 para 21(2)(b), duty is not chargeable under Sch 15 by reason only that the instrument is amended on its face pursuant to an agreement for the variation of any of its original terms or conditions: Sch 15 para 20 (amended by Finance Act 2008 Sch 32 para 11(4)). An instrument in respect of which duty is chargeable under the Finance Act 1999 Sch 15 para 2 (see PARA 1065) which has been stamped ad valorem is treated as duly stamped for all purposes other than Sch 15 para 25: Sch 15 para 26 (amended by Finance Act 2008 Sch 32 para 11(5)).

A person who, in furnishing particulars under the Finance Act 1999 Sch 15 paras 21-23 wilfully or negligently furnishes particulars that are false in any material respect is liable to a penalty not exceeding £300 and twice the amount by which the stamp duty chargeable exceeds that paid: Sch 15 para 25.

For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(iii). Bearer Instruments, Depositary Receipts and Clearance Services/B. BEARER INSTRUMENTS/1069. Ascertainment of market value.

**1069. Ascertainment of market value.**

In relation to an instrument[1] which is chargeable with duty on issue[2], the market value of the stock[3] constituted by or transferable[4] by means of that instrument is ascertained as follows:

66 (1) where the stock was offered for public subscription within 12 months before the issue of the instrument, the amount subscribed for the stock is taken as the market value[5];

67 (2) in any other case, the market value is taken as the value of the stock on the first day within one month after the issue of the instrument on which stock of that description is dealt in on a stock exchange in the United Kingdom[6] or, if stock of that description is not so dealt in, the value of the stock immediately after the issue of the instrument[7].

In relation to an instrument which is chargeable on transfer of the stock constituted by or transferable by means of that instrument, the market value is taken as the value of the stock on the date when the contract was made in the case of a transfer pursuant to a contract of sale[8]. In any other case the market value is taken as the value on the day preceding that on which the instrument is presented to the Commissioners of Inland Revenue for stamping or, if it is not so presented, on the date of the transfer[9].

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1963 s 73(4)).

2 As to bearer instruments charged on issue see PARA 1068 ante.

3 For the meaning of 'stock' see PARAS 1029 note 4, 1066 note 5 ante.

4 For the meaning of 'transferable' see PARA 1066 note 4 ante.

5 Finance Act 1963 s 61(1)(a).

6 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

7 Finance Act 1963 s 61(1)(b).

8 Ibid s 61(2)(a).

9 Ibid s 61(2)(b). Section 61 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125

(amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

220 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

221 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

222 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1069 Ascertainment of market value**

TEXT AND NOTES--Finance Act 1963 s 61 replaced by Finance Act 1999 Sch 15 para 7, by reference to the charge under Sch 15 paras 1, 2 (see PARA 1065). This amended provision does not apply to instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2). For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

TEXT AND NOTE 5--Head (1) applies whether the offer for public subscription was in registered or bearer form: see the Finance Act 1999 Sch 15 para 7(2).

## *C. DEPOSITARY RECEIPTS AND CLEARANCE SERVICES*

### 1070. Depositary receipts; the charge.

Ad valorem duty at a higher rate than that generally charged in respect of the transfer on sale of securities[1] is imposed on an instrument[2] which transfers relevant securities[3] of a company incorporated in the United Kingdom[4] to a person who at the time of the transfer falls within any of the following categories[5]. A person falls within:

68 (1) the first category if his business is exclusively that of holding relevant securities:

1

1. (a) as nominee or agent for a person whose business is or includes issuing depositary receipts[6] for relevant securities; and
2. (b) for the purposes of such part of the business mentioned in head (a) above as consists of issuing such depositary receipts, in a case where the business does not consist exclusively of that[7];

2

69 (2) the second category, if:

3

3. (a) he is specified for that purpose by the Treasury by order made by statutory instrument[8]; and
4. (b) his business is or includes issuing depositary receipts for relevant securities[9];

4

70 (3) the third category, if:

5

5. (a) he is specified for that purpose by the Treasury by order made by statutory instrument[10];
6. (b) he does not fall within the first category but his business includes holding relevant securities as nominee or agent for a person who falls within head (2)(b) above at the time of the transfer[11]; and
7. (c) he holds relevant securities as nominee or agent for such a person, for the purposes of such part of that person's business as consists of issuing depositary receipts for relevant securities, in a case where the business does not consist exclusively of that[12].

6

If stamp duty is chargeable on the instrument under the heading 'Conveyance or Transfer on Sale'[13], the rate at which the duty is charged is £1.50 for every £100 or part of £100 of the amount or value of the consideration for the sale to which the instrument gives effect[14].

If stamp duty is chargeable on the instrument under the heading 'Conveyance or Transfer of any kind not hereinbefore described'[15], the rate at which the duty is charged is £1.50 for every £100 or part of £100 of the value of the securities at the date the instrument is executed[16]. However, the rate is £1 for every £100 or part of £100 of the value of the securities at that date in a case where:

71 (i) at the time of the transfer the transferor is a qualified dealer[17] in securities of the kind concerned or a nominee of such a qualified dealer;
72 (ii) the transfer is made for the purposes of the dealer's business;
73 (iii) at the time of the transfer, the dealer is not a market maker[18] in securities of the kind concerned; and
74 (iv) the instrument contains a statement that heads (i) to (iii) above are fulfilled[19].

Where, however, an instrument transfers relevant securities of a company incorporated in the United Kingdom (A) to a company which at the time of the transfer falls within the first category and is resident in the United Kingdom; and (B) from a company which at that time falls within that category and is so resident, the maximum stamp duty chargeable on the instrument is 50 pence[20].

The charge to stamp duty under the above provisions is prospectively abolished as from a day to be appointed by statutory instrument[21].

A charge to stamp duty reserve tax at the same rate as the stamp duty may arise where a depositary bank or its nominee acquires the securities by means other than a transfer chargeable with ad valorem stamp duty[22]. As the higher rate charge will apply only where the instrument of transfer is a chargeable instrument under one of the heads of charge mentioned above, transfers which are exempt from all stamp duty are also exempt from the higher rate charge[23].

1 As to the rate of duty on transfers of securities on sale generally see PARA 1029 ante. For the justification for the higher rate charge on the conversion of shares into depositary receipts see PARA 1065 ante.

2 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1986 s 114(4)). Section 67 applies to any instrument executed on or after the day on which the rule of the Stock Exchange that prohibited a person from carrying on business as both a broker and a jobber was abolished (ie 27 October 1986): s 67(10). As to the prospective abolition of the charge under s 67 see the text and note 21 infra. Section 67 is, accordingly, prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

3 References in the Finance Act 1986 ss 67-69 (see the text and notes infra and PARA 1071 post) to relevant securities, or to relevant securities of a company, are to shares in or stock or marketable securities of any company, which, unless otherwise stated, need not be incorporated in the United Kingdom: s 69(3). For the meaning of 'stock' and 'marketable security' see PARA 1029 notes 4-5 ante (definitions applied by virtue of s 114(4)). Section 69 is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day. For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

4 In relation to any instrument which transfers such units as are referred to in the Finance Act 1988 s 143(1) (paired shares: see PARA 1099 post), and is executed on or after 29 July 1988, the foreign company is treated for the purposes of the Finance Act 1986 s 67 as a company incorporated in the United Kingdom: Finance Act 1988 s 143(6).

5 Finance Act 1986 s 67(1).

6 For the purposes of ibid ss 67, 68, a 'depositary receipt for relevant securities' is an instrument acknowledging (1) that a person holds relevant securities or evidence of the right to receive them; and (2) that another person is entitled to rights, whether expressed as units or otherwise, in or in relation to relevant securities of the same kind, including the right to receive such securities, or evidence of the right to receive them, from the person mentioned in head (1) supra, except that for those purposes a depositary receipt for relevant securities does not include an instrument acknowledging rights in or in relation to securities if they are issued or sold under terms providing for payment in instalments and for the issue of the instrument as evidence that an instalment has been paid: s 69(1). The Treasury may by regulations provide that for s 69(1) as it has effect for the time being there may be substituted a subsection containing a different definition of a depositary receipt for those purposes: s 69(2). The power to make regulations under s 69 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 69(9). At the date at which this volume states the law, no such regulations had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Ibid s 67(6).

8 Ibid s 67(7)(a). At the date at which this volume states the law, no such order had been made.

9 Ibid s 67(7)(b).

10 Ibid s 67(8)(a). At the date at which this volume states the law, no such order had been made.

11 Ibid s 67(8)(b).

12 Ibid s 67(8)(c).

13 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

14 Finance Act 1986 s 67(2). Section 67(2) does not apply in a case falling within s 67(9) (see heads (A)-(B) in the text): see note 20 infra.

15 Ie under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described': see PARA 1077 post.

16 Finance Act 1986 s 67(3). For these purposes, the value of the securities at the date the instrument is executed is taken to be the price they might reasonably be expected to fetch on a sale at that time in the open market: s 69(4). For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of s 114(4)).

Where s 67(3) applies, the Stamp Act 1891 s 15(2) (as amended) (stamping of instruments after execution: see PARA 1020 ante) has effect as if the instrument were specified in the first column of s 15(2)(d), Table (as amended) and the transferee were specified (opposite the instrument) in the second: Finance Act 1986 s 69(5).

In a case where (1) securities are issued, or securities sold are transferred, and, in either case, they are to be paid for in instalments; (2) the person to whom they are issued or transferred holds them and transfers them to another person when the last instalment is paid; (3) the transfer to the other person is effected by an instrument in the case of which s 67(3) applies; (4) before the execution of that instrument an instrument is received by a person falling at the time of the receipt within s 67(6), (7) or (8) (see heads (1)-(3) in the text); (5) the instrument so received evidences all the rights which, by virtue of the terms under which the securities are issued or sold as mentioned in head (1) supra, subsist in respect of them at the time of the receipt; and (6) the instrument by which the transfer is effected contains a statement that heads (1)-(2) and (5) supra are fulfilled, s 67(3) has effect as if the reference to the value there mentioned were to an amount, if any, equal to the total of the instalments payable, less those paid before the transfer to the other person is effected: s 67(5).

Section 67(3), (5) does not apply in a case falling within s 67(9) (see heads (A)-(B) in the text): see note 20 infra.

17 For these purposes, a person is a qualified dealer in securities of a particular kind if he deals in securities of that kind and (1) is a member of a recognised stock exchange within the meaning given by the Income and Corporation Taxes Act 1988 s 841 (see INCOME TAXATION vol 23(1) (Reissue) PARA 512); or (2) is designated a qualified dealer by order made by the Treasury: Finance Act 1986 s 69(6); Income and Corporation Taxes Act 1988 s 844(3), Sch 30 para 21(3). The power to make an order under the Finance Act 1986 s 69 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 69(9). At the date at which this volume states the law, no such order had been made.

18 For these purposes, a person is a market maker in securities of a particular kind if he (1) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of that kind at a price specified by him; and (2) is recognised as doing so by the Council of the Stock Exchange: ibid s 69(7). The Treasury may by regulations provide that for s 69(7) as it has effect for the time being there is to be substituted a subsection containing a different definition of a market maker for these purposes: s 69(8). At the date at which this volume states the law, no such regulations had been made. As to the power to make regulations see note 5 supra.

19 Ibid s 67(4). Section 67(4) does not apply in a case falling within s 67(9) (see heads (A)-(B) in the text): see note 20 infra.

20 Ibid s 67(9). In such a case, s 67(2)-(5) does not apply: s 67(9).

21 See the Finance Act 1990 ss 108(8), 111(1); and PARA 1005 ante.

22 See PARA 1122 post. As to stamp duty reserve tax see PARA 1118 et seq post; and as to its prospective abolition see PARA 1119 post.

23 As to the exemptions from stamp duty see PARA 1082 et seq post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

223 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

224 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in

the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

225 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1070 Depositary receipts; the charge**

TEXT AND NOTES--These provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20 Pt V(2).

TEXT AND NOTES 1-5, 13-16--Where an instrument (other than a bearer instrument) transfers relevant securities of a company incorporated in the United Kingdom to a person who at the time of the transfer falls within the Finance Act 1986 s 67(6), (7) or (8), then (1) if stamp duty is chargeable on the instrument under the Finance Act 1999 Sch 13 paras 1-9, the rate at which the duty is chargeable is 1•5% of the amount or value of the consideration for the sale to which the instrument gives effect; and (2) in any other case, if stamp duty is chargeable on the instrument under s 67(3), subject to s 67(5), the rate at which that duty is chargeable is 1•5% of the value of the securities at the date the instrument is executed: s 67(1)-(3) (substituted by Finance Act 1999 Sch 14 para 12; Finance Act 1986 s 67(1), (3) amended by Finance Act 2008 Sch 32 para 14). 'Bearer instrument' has the meaning given by the Finance Act 1999 Sch 15 para 3 (see PARA 1066): s 67(9A) (added by Finance Act 2008 Sch 32 para 14).

For the prospective repeal of the Finance Act 1999 Sch 14 para 12 from abolition day, see s 123(3); and PARAS 1004, 1005.

Finance Act 1986 s 69(5) repealed except in relation to instruments relating to units under unit trust schemes (see PARA 1121A): Finance Act 1999 Sch 20 Pt V(1).

TEXT AND NOTES 17-19--Finance Act 1986 ss 67(4), 69(6)-(8) repealed: Finance Act 1997 s 99(1), (2), Sch 18 Pt VII.

TEXT AND NOTE 20--No duty is now chargeable and the references to residence in the United Kingdom are removed: Finance Act 1986 s 67(9) (amended by Finance Act 2000 s 134(3), Sch 40 Pt III; and Finance Act 2008 Sch 32 para 6).

**1071. Notification requirements in relation to depositary receipts.**

A person whose business is or includes issuing depositary receipts[1] for relevant securities[2] of a company incorporated in the United Kingdom[3] must notify the Commissioners of Inland Revenue of that fact before the end of the period of one month beginning with the date on which he first issues such depositary receipts[4].

A person whose business includes, but does not exclusively consist of, holding relevant securities of a company incorporated in the United Kingdom (1) as nominee or agent for a person whose business is or includes issuing depositary receipts for relevant securities; and (2) for the purposes of such part of the business mentioned in head (1) above as consists of issuing such depositary receipts, in a case where the business does not consist exclusively of that, must notify the commissioners of that fact before the end of the period of one month beginning with the date on which he first holds such relevant securities as such a nominee or agent and for such purposes[5].

A person who fails to comply with either of these provisions is liable to a fine not exceeding £1,000[6].

A company which is incorporated in the United Kingdom and becomes aware that any shares in the company are held by such a person as is mentioned in any of the above provisions must notify the commissioners of that fact before the end of the period of one month beginning with the date on which the company first becomes aware of that fact[7]. A company which fails to comply with this requirement is liable to a fine not exceeding £100[8].

No person or company will, however, be so required to notify the commissioners if (a) the person issues the receipts, provides the services or holds the securities; or (b) the company first becomes aware, on or after the abolition day[9].

1 For the meaning of 'depositary receipt' see PARA 1070 note 6 ante.

2 For the meaning of 'relevant securities' see PARA 1070 note 3 ante.

3 In relation to any instrument which transfers such units as are referred to in the Finance Act 1988 s 143(1) (paired shares: see PARA 1099 post), and is executed on or after 29 July 1988, the foreign company is treated for the purposes of the Finance Act 1986 s 68 as a company incorporated in the United Kingdom: Finance Act 1988 s 143(6). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

4 Finance Act 1986 s 68(1).

5 Ibid s 68(2).

6 Ibid s 68(4). The Stamp Act 1891 s 121 (recovery of penalties: see PARA 1117 post) applies to fines under the Finance Act 1986 s 68(4) or (5) (see the text to note 8 infra) as it applies to fines imposed by the 1891 Act: Finance Act s 68(6).

7 Ibid s 68(3).

8 Ibid s 68(5).

9 Finance Act 1990 s 109(4), (5). The Finance Act 1986 s 68 is, accordingly, prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

226 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

227 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the

transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

228 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1071 Notification requirements in relation to depositary receipts**

TEXT AND NOTES 6, 8--The reference is now to a 'penalty' of a similar amount: Finance Act 1986 s 68(4), (5) (amended by the Finance Act 1999 Sch 17 para 8)). Stamp Duty Act 1891 s 121 repealed: Finance Act 1999 Sch 20 Pt V(3). For the prospective repeal of these provisions from abolition day, see s 123(3) and PARAS 1004, 1005.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(iii). Bearer Instruments, Depositary Receipts and Clearance Services/C. DEPOSITARY RECEIPTS AND CLEARANCE SERVICES/1072. Clearance services; in general.

**1072. Clearance services; in general.**

Ad valorem duty at a higher rate than that generally charged in respect of the transfer on sale of securities generally[1] is imposed on an instrument[2] which transfers relevant securities[3] of a company incorporated in the United Kingdom[4] to a person who at the time of the transfer falls within any of the following categories[5]. A person falls within:

75 (1) the first category if his business is exclusively that of holding shares, stock or other marketable securities:

7

8. (a) as nominee or agent for a person whose business is or includes the provision of clearance services for the purchase and sale of shares, stock or other marketable securities; and
9. (b) for the purposes of such part of the business mentioned in head (a) above as consists of the provision of such clearance services, in a case where the business does not consist exclusively of that[6];

8

76 (2) the second category if:

9

10. (a) he is specified for that purpose by the Treasury by order made by statutory instrument[7]; and
11. (b) his business is or includes the provision of clearance services for the purchase and sale of relevant securities[8];

10

77 (3) the third category if:

11

12. (a) he is specified for that purpose by the Treasury by order made by statutory instrument[9];
13. (b) he does not fall within the first category but his business includes holding relevant securities as nominee or agent for a person who falls within head (2)(b) above at the time of the transfer[10]; and
14. (c) he holds relevant securities as nominee or agent for such a person, for the purposes of such part of that person's business as consists of the provision of clearance services for the purchase and sale of relevant securities (in a case where that business does not consist exclusively of that)[11].

12

If stamp duty is chargeable on the instrument under the heading 'Conveyance or Transfer on Sale'[12], the rate at which the duty is charged under that heading is the rate of £1.50 for every £100 or part of £100 of the amount or value of the consideration for the sale to which the instrument gives effect[13].

If stamp duty is chargeable on the instrument under the heading 'Conveyance or Transfer of any kind not hereinbefore described'[14], the rate at which the duty is charged is £1.50 for every £100 or part of £100 of the value of the securities at the date the instrument is executed[15]. However, the rate is £1 for every £100 or part of £100 of the value of the securities at that date in a case where:

78 (i) at the time of the transfer the transferor is a qualified dealer[16] in securities of the kind concerned or a nominee of such a qualified dealer;
79 (ii) the transfer is made for the purposes of the dealer's business;
80 (iii) at the time of the transfer, the dealer is not a market maker[17] in securities of the kind concerned; and
81 (iv) the instrument contains a statement that heads (i) to (iii) above are fulfilled[18].

Where, however, an instrument transfers relevant securities of a company incorporated in the United Kingdom (A) to a company which at the time of the transfer falls within the first category and is resident in the United Kingdom; and (B) from a company which at that time falls within that category and is so resident, the maximum stamp duty chargeable on the instrument is 50 pence[19].

The charge to stamp duty under the above provisions is prospectively abolished as from a day to be appointed by statutory instrument[20].

A charge to stamp duty reserve tax at the same rate as the stamp duty may arise where a person providing clearance services or his nominee acquires the securities by means other than a transfer chargeable with ad valorem stamp duty[21].

Transfers to certain market institutions and intermediaries are exempt from all stamp duty[22]. As the higher rate charge will apply only where the instrument of transfer is a chargeable instrument under one of the heads of charge mentioned above, transfers which are exempt from all stamp duty are also exempt from the higher rate charge[23].

1 As to the rate of duty on transfers of securities on sale generally see PARA 1029 ante; and as to the justification for the higher rate charge for transfers into clearance systems see PARA 1065 ante.

2 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1986 s 114(4)). Section 70 (as amended) (see the text and notes 3-19 infra) applies to any instrument executed on or after the day on which the rule of the Stock Exchange that prohibited a person from carrying on business as both a broker and a jobber was abolished (ie 27 October 1986): s 70(10). As to the prospective abolition of the charge under s 70 (as amended) see the text and note 20 infra. Section 70 (as amended) is, accordingly, prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

3 References in the Finance Act 1986 s 70 (as amended) and s 71 (see the text and notes 4-19 infra and PARA 1073 post) to 'relevant securities', or to relevant securities of a company, are to shares in or stock or marketable securities of any company which, unless otherwise stated, need not be incorporated in the United Kingdom: s 72(1). For the meaning of 'stock' and 'marketable security' see PARA 1029 notes 4-5 ante (definitions applied by virtue of s 114(4)). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

4 In relation to any instrument which transfers such units as are referred to in the Finance Act 1988 s 143(1) (paired shares: see PARA 1099 post), and is executed on or after 29 July 1988, the foreign company is treated for the purposes of the Finance Act 1986 s 70 (as amended) as a company incorporated in the United Kingdom: Finance Act 1988 s 143(6).

5 Finance Act 1986 s 70(1).

6 Ibid s 70(6) (amended by the Finance Act 1987 s 52).

7 Finance Act 1986 s 70(7)(a). At the date at which this volume states the law, no such order had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 Ibid s 70(7)(b).

9 Ibid s 70(8)(a). At the date at which this volume states the law, no such order had been made.

10 Ibid s 70(8)(b).

11 Ibid s 70(8)(c).

12 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

13 Finance Act 1986 s 70(2). Section 70(2) does not apply in a case falling within s 70(9) (see heads (A)-(B) in the text): see note 19 infra.

14 Ie under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described': see PARA 1077 post.

15 Finance Act 1986 s 70(3). For these purposes, the value of the securities at the date the instrument is executed is to be taken to be the price they might reasonably be expected to fetch on a sale at that time in the open market: s 72(2). For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of s 114(4)).

Where s 70(3) applies, the Stamp Act 1891 s 15(2) (as amended) (stamping of instruments after execution: see PARA 1020 ante) has effect as if the instrument were specified in the first column of s 15(2)(d), Table (as amended) and the transferee were specified (opposite the instrument) in the second: Finance Act 1986 s 72(3).

In a case where (1) securities are issued, or securities sold are transferred, and, in either case, they are to be paid for in instalments; (2) the person to whom they are issued or transferred holds them and transfers them to another person when the last instalment is paid; (3) the transfer to the other person is effected by an instrument in the case of which s 70(3) applies; (4) before the execution of that instrument an instrument is received by a person falling at the time of the receipt within s 70(6) (as amended: see note 6 supra) or s 70(7) or (8) (see heads (1)-(3) in the text); (5) the instrument so received evidences all the rights which, by virtue of the terms under which the securities are issued or sold as mentioned in head (1) supra, subsist in respect of them at the time of the receipt; and (6) the instrument by which the transfer is effected contains a statement that heads (1)-(2) and (5) supra are fulfilled, s 70(3) has effect as if the reference to the value there mentioned were to an amount, if any, equal to the total of the instalments payable, less those paid before the transfer to the other person is effected: s 70(5).

Section 70(3), (5) does not apply in a case falling within s 70(9) (see heads (A)-(B) in the text): see note 19 infra.

16 For these purposes, 'qualified dealer' has at any particular time the same meaning as it has at that time for the purposes of ibid s 67(4) (see PARA 1070 note 17 ante): s 72(4).

17 For these purposes, 'market maker' has at any particular time the same meaning as it has at that time for the purposes of ibid s 67(4) (see PARA 1070 note 18 ante): s 72(4).

18 Ibid s 70(4). Section 70(4) does not apply in a case falling within s 70(9) (see heads (A)-(B) in the text): see note 19 infra.

19 Ibid s 70(9). In such a case, s 70(2)-(5) does not apply: s 70(9).

20 See the Finance Act 1990 ss 108(8), 111(1); and PARA 1005 ante.

21 See PARA 1123 post. As to stamp duty reserve tax see PARA 1118 et seq post; and as to its prospective abolition see PARA 1119 post.

22 See PARA 1104 post.

23 For the exemptions from stamp duty see PARA 1082 et seq post.

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the

enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

229 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

230 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

231 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net

market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1072 Clearance services: in general**

TEXT AND NOTES--These provisions (as amended: see infra) do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20 Pt V(2).

As to transfers between a depositary receipt system and a clearance system see the Finance Act 1986 s 72A; and PARA 1072A.

NOTE 2--'Instrument' does not include a bearer instrument (which has the meaning given in the Finance Act 1999 Sch 15 para 3) (see PARA 1066): Finance Act 1986 s 70(1), (9A) (s 70(1) amended, s 70(9A) added, by Finance Act 2008 Sch 32 para 15).

TEXT AND NOTES 12-15--If stamp duty is chargeable on the instrument under the Finance Act 1999 Sch 13 paras 1-9, the rate at which the duty is chargeable is 1•5% of the amount or value of the consideration for the sale to which the instrument gives effect; and, in any other case, if stamp duty is chargeable on the instrument under s 70(3), subject to s 70(5), the rate at which that duty is chargeable is 1•5% of the value of the securities at the date the instrument is executed: Finance Act 1986 s 70(2), (3) (substituted by Finance Act 1999 Sch 14 para 13; Finance Act 1986 s 70(3) amended by Finance Act 2008 Sch 32 para 15).

For the prospective repeal of the Finance Act 1999 Sch 14 para 13 from abolition day, see s 123(3); and PARAS 1004, 1005.

Finance Act 1986 s 72(3) repealed except in relation to instruments relating to units under unit trust schemes (see PARA 1121A): Finance Act 1999 Sch 20 Pt V(1).

NOTE 15--1986 Act s 70(3)-(5) does not apply where an election for alternative tax treatment is made under s 97A (see PARA 1123A): s 70(1) (amended by Finance Act 1996 s 196(1)).

TEXT AND NOTES 16-18--Finance Act 1986 ss 67(4), 70(4), 72(4) repealed: Finance Act 1997 s 99(3), (4).

TEXT AND NOTE 19--No duty is now payable and the references to residence in the United Kingdom are removed: Finance Act 1986 s 70(9) (amended by Finance Act 1999 Sch 14 para 13(3); Finance Act 2000 s 134(3); Sch 40 Pt III; and Finance Act 2008 Sch 32 para 7).

NOTE 19--Finance Act 1986 s 70(2)-(5) does not apply where an election for alternative tax treatment is made under s 97A: s 70(1) (amended by the Finance Act 1996 s 196(1).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(iii). Bearer Instruments, Depositary Receipts and Clearance Services/C. DEPOSITARY RECEIPTS AND CLEARANCE SERVICES/1072A. Transfers between depositary receipt system and clearance system.

**1072A. Transfers between depositary receipt system and clearance system.**

Where an instrument[1] transfers relevant securities[2] of a company incorporated in the United Kingdom between a depositary receipt system and a clearance system[3], no stamp duty is chargeable[4].

1 For the meaning of 'instrument' see PARA 1072 NOTE 2.

2 For the meaning of 'relevant securities' see PARA 1072 NOTE 3.

3 A transfer between a depositary receipt system and a clearance system means a transfer (1) from or to a company that at the time of the transfer falls within the Finance Act 1986 s 67(6) (see PARA 1070), and (2) to or from a company that at that time falls within s 70(6) (see PARA 1072): Finance Act 1986 s 72A(2) (s 72A added by Finance Act 2000 s 134(1)).

4 Finance Act 1986 s 72A(1) (amended by Finance Act 2008 Sch 32 para 8). The provisions of the Finance Act 1986 s 67(2)-(5) or 70(2)-(5) accordingly do not apply: Finance Act 1986 s 72A(1)(a). Section 72A does not apply to a transfer from such a company as is mentioned in NOTE 3 head (2) if at the time of the transfer an election is in force under s 97A (see PARA 1123A) in relation to the clearance services for the purposes of which the securities are held immediately after the transfer: s 72A(3).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

232 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was

transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

233 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

234 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(iii). Bearer Instruments, Depositary Receipts and Clearance Services/C. DEPOSITARY RECEIPTS AND CLEARANCE SERVICES/1073. Notification requirements in relation to clearance services.

**1073. Notification requirements in relation to clearance services.**

A person whose business is or includes the provision of clearance services for the purchase and sale of relevant securities[1] of a company incorporated in the United Kingdom[2] must notify the Commissioners of Inland Revenue of that fact before the end of the period of one month beginning with the date on which he first provides such clearance services[3].

A person whose business includes, but does not exclusively consist of, holding relevant securities of a company incorporated in the United Kingdom (1) as nominee or agent for a person whose business is or includes the provision of clearance services for the purchase and sale of relevant securities; and (2) for the purposes of such part of the business mentioned in head (1) above as consists of the provision of such clearance services, in a case where the business does not consist exclusively of that, must notify the commissioners of that fact before the end of the period of one month beginning with the date on which he first hold such relevant securities as such a nominee or agent and for such purposes[4].

A person who fails to comply with either of these provisions is liable to a fine not exceeding £1,000[5].

A company which is incorporated in the United Kingdom and becomes aware that any shares in the company are held by such a person as is mentioned in any of the above provisions must notify the commissioners of that fact before the end of the period of one month beginning with the date on which the company first becomes aware of that fact[6]. A company which fails to comply with this requirement is liable to a fine not exceeding £100[7].

No person or company will, however, be so required to notify the commissioners if (a) the person issues the receipts, provides the services or holds the securities; or (b) the company first becomes aware, on or after the abolition day[8].

1 For the meaning of 'relevant securities' see PARA 1072 note 3 ante.

2 In relation to any instrument which transfers such units as are referred to in the Finance Act 1988 s 143(1) (paired shares: see PARA 1099 post), and is executed on or after 29 July 1988, the foreign company is treated for the purposes of the Finance Act 1986 s 71 as a company incorporated in the United Kingdom: Finance Act 1988 s 143(6). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

3 Finance Act 1986 s 71(1).

4 Ibid s 71(2).

5 Ibid s 71(4). The Stamp Act 1891 s 121 (recovery of penalties: see PARA 1117 post) applies to fines under the Finance Act 1986 s 71(4) or (5) (see the text to note 7 infra) as it applies to fines imposed by the 1891 Act: Finance Act 1986 s 71(6).

6 Ibid s 71(3).

7 Ibid s 71(5).

8 Finance Act 1990 s 109(4), (5). The Finance Act 1986 s 71 is, accordingly, prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

235 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

236 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the

transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

237 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1073 Notification requirements in relation to clearance services**

TEXT AND NOTES 5, 7--The reference is now to a 'penalty' of a similar amount: Finance Act 1986 s 68(4), (5) (amended by the Finance Act 1999 Sch 17 para 8). Stamp Duty Act 1891 s 121 repealed: Finance Act 1999 Sch 20 Pt V(3).

## *D. UNIT TRUSTS*

### 1074. Transfer of units.

In the enactments relating to stamp duty[1] any reference to stock[2] is deemed to include a reference to a unit[3] under a unit trust scheme[4], and any reference in those enactments to a stock certificate to bearer[5] is deemed to include a reference to a certificate to bearer[6] in relation to a unit under a unit trust scheme[7]. Any reference in those enactments to the nominal amount or nominal value of stock is to be construed, in relation to such units, as being a reference to the value of the units in question computed as if each unit were worth, and worth only, the price at which similar units were first obtainable from the trustees or managers of the scheme[8]. Accordingly, the provisions which impose ad valorem duty in respect of the transfer of stock[9] and those which direct that stock is to be treated as consideration for a conveyance on sale[10] apply to units under a unit trust scheme. It is not lawful for the trustees or managers of a unit trust to register a transfer of units unless an instrument of transfer has been delivered to them[11].

The Treasury may by regulations[12] make such provision as it considers appropriate for securing that the enactments relating to stamp duty[13] have effect in relation to (1) open-ended investment companies[14] of any such description as may be specified in the regulations; (2) holdings in, and the assets of such companies; and (3) transactions involving such companies, in a manner corresponding, subject to such modifications as the Treasury considers appropriate, to the manner in which they have effect in relation to unit trusts[15], to rights under, and the assets subject to, such trusts and to transactions for purposes connected with such trusts[16].

1 'The enactments relating to stamp duty' means the Stamp Act 1891 and any enactment which amends it or is required to be construed together with it (see PARA 1009 note 1 ante): Finance Act 1946 s 57(1).

2 For the meaning of 'stock' see PARA 1029 note 4 ante (definition applied by virtue of ibid s 67(7)).

3 For the meaning of 'unit' see PARA 1029 note 4 ante.

4 Finance Act 1946 s 54(1). For the meaning of 'unit trust scheme' see PARA 1029 note 4 ante.

5 As to the duty on bearer instruments see PARA 1066 et seq ante; and as to its prospective abolition see PARA 1004 ante.

6 'Certificate to bearer', in relation to a unit under a unit trust scheme, means a document by the delivery of which the unit can be transferred: Finance Act 1946 s 57(1) (amended by the Finance Act 1963 s 78(3)(b), Sch 14 Pt IV).

7 Finance Act 1946 s 54(1). Subject to the provisions of Pt VII (ss 52-57) (as amended), the enactments relating to stamp duty have effect accordingly: s 54(1).

8 Ibid s 54(2).

9 As to the ad valorem duty chargeable on a transfer on sale of stock see PARA 1029 ante. As to the higher rate charge in respect of bearer instruments, depositary receipts and clearance services see PARA 1065 et seq ante.

10 See PARA 1044 ante.

11 See PARA 1075 post.

12 The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons and includes power to make different provision for different cases and to make such incidental, supplemental, consequential and transitional provision as the Treasury may think fit: Finance Act 1995 s 152(4), (5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

13 For these purposes, 'the enactments relating to stamp duty' means the Stamp Act 1891 and any enactment (including any Northern Ireland legislation) which amends it or is required to be construed together with it (see PARA 1009 note 1 ante): Finance Act 1995 s 152(6). Reference to those enactments, or to any of them, have effect as including reference to enactments prospectively repealed by the Finance Act 1990 ss 107-110 (see PARAS 1004-1006 ante): Finance Act 1995 s 152(6).

14 'Open-ended investment company' has the same meaning as in the Financial Services and Markets Act 2000 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603): Finance Act 1995 s 152(6).

15 For these purposes, any reference to unit trusts has effect as a reference to any unit trust scheme within the meaning given by the Finance Act 1946 s 57 (as amended) (see PARA 1029 ante): Finance Act 1995 s 152(7)(b).

16 Ibid s 152(1), (2)(b). A like power exists in relation to the Finance Act 1986 Pt IV (ss 86-99) (as amended) (stamp duty reserve tax: see PARA 1118 et seq post): see the Finance Act 1995 s 152(2)(b); and PARA 1129 post. As to the specific provision which may be made by regulations under s 152 see s 152(3). At the date at which this volume states the law, no such regulations had been made.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

238 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

239 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or

marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

240 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1074 Transfer of units**

TEXT AND NOTES--From 6 February 2000 until abolition day (see PARAS 1004, 1005) no stamp duty is chargeable on a transfer or other instrument relating to a unit under a unit trust scheme (without prejudice to any charge to stamp duty on a conveyance or

transfer on sale of property other than units under a unit trust scheme in relation to which such units form the whole or party of the consideration, or under the Finance Act 1999 Sch 15 (see PARA 1065 et seq): s 123, Sch 19 para 1. Finance Act 1946 ss 54, 57 accordingly repealed: Finance Act 1999 Sch 20 Pt V(5).

TEXT AND NOTES 1-6--See now Finance Act 1999 Sch 19 paras 14(3), 19.

TEXT AND NOTES 13, 16--The reference is now to the enactments relating to stamp duty, and the enactments relating to stamp duty reserve tax (ie the Finance Act 1986 Pt IV and any enactment which amends or is required to be construed as one with Pt IV): Finance Act 1995 s 152(2)(b), (3)(c), (6) (all amended by the Finance Act 1999 s 123, Sch 19 para 13). For the prospective repeal of these provisions from abolition day, see s 123(3) and PARAS 1004, 1005.

See the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997, SI 1997/1156, PARA 1018.

**1074A. Mergers of authorised unit trusts.**

Stamp duty is not chargeable on an instrument transferring any property which is subject to the trusts of an authorised unit trust[1] ('the target trust') to the trustees of another authorised unit trust ('the acquiring trust') if (1) the transfer forms part of an arrangement under which the whole of the available property of the target trust[2] is transferred to the trustees of the acquiring trust; (2) under the arrangement, all the units in the target trust are extinguished; (3) the consideration under the arrangement consists of or includes the issue of units ('the consideration units') in the acquiring trust to the persons who held the extinguished units; (4) the consideration units are issued to those persons in proportion to their holdings of the extinguished units; and (5) the consideration under the arrangement does not include anything else, other than the assumption or discharge by the trustees of the acquiring trust of liabilities of the trustees of the target trust[3].

1 Ie a unit trust scheme (see PARA 1029) in the case of which an order under the Financial Services and Markets Act 2000 s 243 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 608) is in force: Finance Act 1997 s 95(4) (amended by the Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001, SI 2001/3629). Each of the parts of an umbrella scheme (as defined in the Income and Corporation Taxes Act 1988 s 468 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1434) (and not the scheme as a whole) is an authorised unit trust for the purposes of the Finance Act 1997 s 95: s 95(4), (5).

2 Ie the whole of the property subject to the trusts of the target trust, other than any property which is retained for the purposes of discharging liabilities of the trustees of the target trust: ibid s 95(4).

3 Ibid s 95(1), (2). An instrument (see PARA 1001) on which stamp duty is not chargeable by virtue of this provision is not taken to be duly stamped unless it is stamped with the duty to which it would be liable but for this section or it has, in accordance with the Stamp Act 1891 s 12 (see PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty: Finance Act 1997 s 95(3). This provision applies to any instrument which is executed on or after 19 March 1997 (ie the date on which the Finance Act 1997 was passed), but before 1 July 1999: s 95(6).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

241 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

242 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

243 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1075. Transactions deemed to be transfers.**

A person who authorises or requires the trustees or managers under a unit trust scheme[1] to treat him as no longer interested in a unit[2] under the scheme and to treat another person as entitled to that unit is deemed for stamp duty purposes to transfer it[3]. Any instrument[4] by which he gives the authority or makes the requirement is deemed for the purposes of the enactments relating to stamp duty[5] to be a conveyance or transfer on sale[6] or conveyance or transfer falling within the head of charge 'Conveyance or Transfer of any kind not hereinbefore described'[7], according to the nature of the transaction between him and the person whom he authorises the trustees or managers to treat as entitled to the unit[8].

If a person authorises or requires the trustees or managers to treat him as no longer interested in a unit but he does not authorise or request them to treat another person as entitled to that unit, he is deemed for stamp duty purposes to transfer the unit to the managers, and any instrument by which he gives the authority or makes the requirement is deemed to be a conveyance or transfer of the unit on sale[9].

If the managers authorise or require the trustees to treat a person as entitled to a unit, and their power to do so arises from a previous transfer to them of that unit or some other unit, they are deemed to transfer the unit to that person[10]. Any instrument by which they give the authority or make the requirement is deemed for the purposes of the enactments relating to stamp duty to be a conveyance or transfer of the unit[11] except where they are merely recognising or giving effect to a transmission of the unit by operation of law[12]. However, duty exceeding 50 pence is not rendered payable[13] in respect of an instrument of transfer by which the managers transfer any unit if their power to transfer it arises from the transfer to them of that or some other unit within the immediately preceding two months[14].

Notwithstanding anything in the trust instrument[15] of a unit trust scheme it is not lawful for the trustees or managers under the scheme to register a transfer of units unless an instrument of transfer[16] has been delivered to them[17], but this provision does not prejudice any power of theirs to register as entitled to a unit any person to whom that right has been transmitted by operation of law[18].

Where a unit is transferred by a duly stamped instrument of transfer to the managers and within two months the trustees and managers jointly certify (1) that the certificate, if any, in respect of the unit has been cancelled[19]; (2) that as a consequence of the transfer a proportionate part of the trust property[20] has been realised, and the trust property diminished accordingly[21]; and (3) that the unit is extinguished and the managers have no power to transfer any other unit in lieu of it[22], the Commissioners of Inland Revenue must refund the duty on application by the person by or on behalf of whom it was paid on production to them of the instrument of transfer and the joint certificate of the managers and trustees[23].

These provisions will cease to have effect when the abolition of the stamp duty charge on securities transactions is brought into force[24].

1 For the meaning of 'unit trust scheme' see PARA 1029 note 4 ante.

2 For the meaning of 'unit' see PARA 1029 note 4 ante.

3 Finance Act 1946 s 57(2). Section 56(1) (see PARA 1007 note 19 ante), s 56(3) (see PARA 1076 post) and ss 56(4), 57(2)-(4) (as amended) (see the text and notes 4-12, 15-18 infra) are prospectively repealed by the Finance Act 1990 ss 109(6)(a), 132, Sch 19 Pt VI as from a day to be appointed by the Treasury by order: see s 109(7). Any such order (1) must be made by statutory instrument; (2) may make different provision for different statutory provisions or different purposes; and (3) may include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury to be necessary or expedient: s 109(8). At the date at which this volume states the law, no such order had been made. Nothing in s 109, however, affects the application of the Finance Act 1946 s 56 by the Inheritance Tax Act 1984 s 259 (see INHERITANCE TAXATION vol 24 (Reissue) PARA 665): Finance Act 1990 s 109(9).

4 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1946 s 67(7)).

5 For the meaning of 'the enactments relating to stamp duty' see PARA 1074 note 1 ante.

6 As to the ad valorem duty on conveyances or transfers on sale see PARA 1027 ante.

7 As to the fixed duty of 50p under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described' see PARA 1077 post.

8 Finance Act 1946 s 57(2) (amended by the Finance Act 1985 s 98(6), Sch 27 Pt IX). A unit is stock for stamp duty purposes: see PARA 1074 ante. However, no duty is chargeable on any transfer of any unit in an authorised unit trust scheme under the terms of which the funds of the trust (1) cannot be invested in such a way that income can arise to the trustees which will be chargeable to tax in the hands of the trustees otherwise than under Schedule C as profits arising from United Kingdom public revenue dividends or under Case III of Schedule D; and (2) cannot be invested in any investment on the transfer of which ad valorem stamp duty would be chargeable: Finance Act 1980 s 101(1), (2) (substituted by the Finance Act 1989 s 174(1)). For these purposes, 'authorised unit trust scheme' has the same meaning as in the Financial Services Act 1986; and 'United Kingdom public revenue dividends' means public revenue dividends payable in the United Kingdom (whether they are also payable outside the United Kingdom or not) out of the public revenue of the United Kingdom: Finance Act 1980 s 101(3) (as so substituted). As to income tax under Schedule C and Case III of Schedule D see INCOME TAXATION vol 23(1) (Reissue) PARA 464; and for the meaning of 'United Kingdom' see PARA 1007 note 6 ante. The Finance Act 1980 s 101 (as so substituted) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from a day to be appointed by statutory instrument. At the date at which this volume states the law, no such day had been appointed.

9 Finance Act 1946 s 57(3). See *Arbuthnot Financial Services Ltd v IRC* [1985] STC 211.

10 Finance Act 1946 s 57(4).

11 Ibid s 57(4). For the duty on conveyances and transfers see PARA 1029 ante.

12 Ibid s 57(4) proviso. A unit may be transmitted by operation of law on bankruptcy (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 390 et seq) or death (see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 335 et seq).

13 Ie by ibid ss 54-57 (as amended).

14 Ibid s 54(3). As to the prospective repeal of s 54(3) see note 24 infra.

15 For the meaning of 'trust instrument' see PARA 1029 note 4 ante.

16 An order which by virtue of the Insurance Companies Act 1982 s 49, Sch 2C para 5(4) (respectively substituted and added by the Insurance Companies (Third Insurance Directives) Regulations 1994, SI 1994/1696, reg 28(1), (2), Sch 3) operates to transfer any property is treated as an instrument of transfer: see the Insurance Companies Act 1982 Sch 2C para 5(4)(a) (as so added); and INSURANCE.

17 Finance Act 1946 s 56(4). As to the prospective repeal of s 54(4) see note 24 infra.

18 Ibid s 56(4) proviso. See also note 12 supra.

19 Ibid s 54(4)(a).

20 'Trust property' means, in relation to a unit trust scheme, the property subject to the trusts of the trust instrument: ibid s 57(1).

21 Ibid s 54(4)(b).

22 Ibid s 54(4)(c).

23 Ibid s 54(4). Claims are made to the Stamp Office: see PARA 1106 note 9 post.

24 As to the prospective abolition of stamp duty on securities transactions see the Finance Act 1990 s 108; and PARA 1005 ante. The Finance Act 1946 s 54(3), (4) is accordingly repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

## UPDATE

## 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

244 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

245 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of

the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

246 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1075 Transactions deemed to be transfers**

TEXT AND NOTES--Finance Act 1946 ss 54-57 repealed: Finance Act 1999 Sch 20 Pt V(5).

NOTE 16--Insurance Companies Act 1982 repealed and SI 1994/1696 revoked: SI 2001/3649.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(3) INSTRUMENTS LIABLE TO AD VALOREM DUTY/(iii). Bearer Instruments, Depositary Receipts and Clearance Services/D. UNIT TRUSTS/1076. Inspection of documents and keeping of records.

**1076. Inspection of documents and keeping of records.**

The trustees and managers of unit trust schemes are required to permit inspection of documents by persons authorised by the Commissioners of Inland Revenue[1].

Regulations have been made[2] which require:

82 (1) the trustees of unit trust schemes to preserve certificates and instruments of transfer[3] and to keep a record of units[4] and a register of holders of registered units[5] and of certificates to bearer[6]; and

83 (2) the managers of a unit trust scheme to keep an opening statement of units[7] and a daily record of transactions in units[8].

All such registers, statements and other records and documents must be preserved for the life of that trust and for a period of not less than one year thereafter[9], with the exception of instruments of transfer and registered certificates or certificates to bearer, which need not be preserved for a period exceeding three years from the date on which they were finally delivered to the trustees of the scheme[10].

1 See the Stamp Act 1891 s 16; the Finance Act 1946 s 56(1); and PARA 1007 note 19 ante. Section 56(1), (3) is prospectively repealed from a day to be appointed by statutory instrument: see the Finance Act 1990 ss 109(6)(a), 132, Sch 19 Pt VI; and PARA 1075 note 3 ante.

2 Ie under the Finance Act 1946 s 56(3): see the Unit Trust Records Regulations 1946, SI 1946/1586; and the text and notes 3-10 infra. Regulations made by the commissioners may require the trustees and mangers of unit trust schemes to keep such records of the units thereunder, of the persons entitled to units, of transfers of units, and of the issue of certificates to bearer in respect of units, as may be specified in the regulations in relation to the trustees and managers respectively: Finance Act 1946 s 56(3). As to the prospective repeal of s 56(3) see note 1 supra. For the meaning of 'unit' and 'unit trust scheme' see PARA 1029 note 4 ante; and for the meaning of 'certificate to bearer' see PARA 1074 note 6 ante.

3 See the Unit Trust Records Regulations 1946 reg 3.

4 See ibid reg 4.

5 See ibid reg 5. Registers or records so required to be kept may be in loose leaf form instead of in bound books provided that adequate precautions are taken to guard against falsification and ensure its discovery: reg 7(1). The trustees must keep an index of the names of the holders in convenient form, unless the register kept under reg 5 is in such form as to constitute in itself an index: reg 7(2).

6 See ibid reg 6.

7 See ibid reg 8.

8 See ibid reg 9.

9 Ibid reg 10.

10 Ibid reg 10 proviso.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

247 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

248 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2)

Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

249 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1076 Inspection of documents and keeping of records**

TEXT AND NOTES--Finance Act 1946 s 56 repealed: Finance Act 1999 Sch 20 Pt V(5).

## (4) INSTRUMENTS LIABLE TO FIXED DUTY

### 1077. Conveyances liable to fixed duty.

A transfer of securities may be liable to a higher rate ad valorem charge under the provisions relating to depositary receipts[1] or clearance services[2]. Subject to this, however, a conveyance or transfer which is not a conveyance on sale or an instrument chargeable as such by virtue of a specific provision[3], and does not operate by way of mortgage[4], is liable to stamp duty of 50 pence[5] unless it falls within some exemption from duty[6]. Every instrument[7] and every decree or order of any court or of any commissioners by which any property on any occasion, except a sale or mortgage, is transferred to or vested in any person is to be charged with stamp duty as a conveyance or transfer of property[8].

A number of instruments chargeable under this head are exempt if certified in accordance with the relevant regulations[9]. Although the ad valorem charge on voluntary dispositions has been abolished[10], a voluntary disposition may be chargeable to fixed duty under this head, and must be submitted for adjudication[11] unless it is required to be certified[12] or is required to be certified[13] in order to attract the exemption[14].

1 See PARA 1070 ante. As to the prospective abolition of stamp duty on securities see PARA 1005 ante.

2 See PARA 1072 ante.

3 As to conveyances on sale and certain agreements, exchanges etc chargeable as a conveyance on sale see PARA 1027 et seq ante.

4 Instruments formerly chargeable under the Stamp Act 1891 s 1, Sch 1, 'Mortgage, Bond, Debenture, Covenant' (as amended), eg a mortgage, conveyance by way of mortgage, transfer of a mortgage and the release or surrender of a mortgage are not liable to any stamp duty: Finance Act 1971 s 64(1)(c), (2). The relevant head of charge in the Stamp Act 1891 Sch 1 (as amended) has not, however, been repealed; and the Finance Act 1971 s 64(1)(c) does not affect the amount of any duty chargeable under the Stamp Act 1891 Sch 1 (as amended) by reference to that heading: Finance Act 1971 s 64(3).

5 Stamp Act 1891 Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described'.

6 As to stamp duty exemptions see PARA 1082 et seq post.

7 For the meaning of 'instrument' see PARA 1001 ante.

8 Stamp Act 1891 s 62. A conveyance or transfer made for effectuating the appointment of a new trustee is not, however, to be charged with any higher duty than 50p (s 62 proviso); and this limit also applies to any conveyance or transfer for effectuating the retirement of a trustee although no new trustee is appointed (Finance Act 1902 s 9). A decree or order for or having the effect of an order for foreclosure is included in the definition of 'conveyance on sale' in the Stamp Act 1891 s 54, but the charge to ad valorem duty is limited to the value of the property: see PARA 1030 note 7 ante. Section 62 does not apply to a written assent by a personal representative to a devise, or to a specific bequest of leaseholds: see *Kemp v IRC*[1905] 1 KB 581; and the Administration of Estates Act 1925 s 36(11); cf EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 571. As to an assent in favour of a pecuniary legatee or of a purchaser see PARA 1031 note 7 ante.

9 Ie the Stamp Duty (Exempt Instruments) Regulations 1987, SI 1987/516: see PARA 1083 post.

10 See PARA 1002 ante.

11 Ie in accordance with the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

12 Ie by regulations under the Finance Act 1985 s 87(1). At the date at which this volume states the law, no regulations had been made under s 87(1).

13 Ie by regulations under ibid s 87(2): see the Stamp Duty (Exempt Instruments) Regulations 1987, SI 1987/516; and PARA 1083 post.

14 Finance Act s 82(5), (9). Section 82 applies to instruments executed on or after 26 March 1985, or executed on or after 19 March 1985 which were stamped on or after 26 March 1985: s 82(6).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

250 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

251 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of

the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

252 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1077 Conveyances liable to fixed duty**

TEXT AND NOTES--Repealed: Finance Act 1999 Sch 20 Pt V(2); Finance Act 2008 s 100(1).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(4) INSTRUMENTS LIABLE TO FIXED DUTY/1078. Declaration of trust not chargeable as a conveyance on sale.

**1078. Declaration of trust not chargeable as a conveyance on sale.**

A declaration of any use or trust of or concerning any property by any writing, not being a will[1] or an instrument chargeable with ad valorem duty as a conveyance on sale[2], is liable to stamp duty of 50 pence[3].

1 Testamentary instruments are exempt from all stamp duty: see PARA 1089 post.

2 As to the instruments chargeable with ad valorem duty as a conveyance on sale see PARA 1030 et seq ante.

3 See the Stamp Act 1891 s 1, Sch 1, 'Declaration of any use or trust' (amended by the Finance Act 1962 s 30(1)), which imposes a duty of 50p on a declaration of any trust of or concerning any property by any writing, not being a will. Where an agreement for the sale of an equitable interest is carried into effect by means of a declaration of trust, the declaration is chargeable with ad valorem stamp duty as a conveyance on sale: see *Chesterfield Brewery Co v IRC* [1899] 2 QB 7, DC, where there was an agreement by the shareholders of one company to exchange their shares for shares in another company and to hold their existing shares in trust for that other company, and Wills J at 13 held that the agreement was not only a conveyance on sale but was also an agreement for the sale of an equitable interest. As to the duty on conveyances on sale see PARA 1027 et seq ante. A conveyance in exchange for shares is a conveyance on sale: see PARA 1044 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

253 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual

consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

254 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

255 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1078 Declaration of trust not chargeable as a conveyance on sale**

TEXT AND NOTES--Stamp Act 1891 Sch 1, replaced by Finance Act 1999 Sch 13 para 17, repealed by Finance Act 2008 Sch 32 para 10(3)(b).

## 1079. Duplicate or counterpart of a chargeable instrument.

A duplicate or counterpart of an instrument[1] chargeable with duty is liable to the same stamp duty as is chargeable upon the original if less than 50 pence, and in other cases to stamp duty of 50 pence[2]. With the exception of a counterpart lease not executed by or on behalf of the lessor[3], a duplicate or counterpart of an instrument chargeable with duty is not deemed to be duly stamped[4] unless either it is stamped as an original instrument or it bears a stamp denoting that the full and proper duty has been paid on the original of which it is a duplicate or counterpart[5].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 Stamp Act 1891 s 1, Sch 1, 'Duplicate or Counterpart of any instrument chargeable with any duty' (amended by the Finance Act 1974 s 49(1), Sch 11 paras 9, 18).

3 As to the duty on duplicate and counterpart leases see PARA 1054 ante. For the meaning of 'executed' see PARA 1007 note 5 ante.

4 For the meaning of 'duly stamped' see PARA 1007 note 9 ante.

5 Stamp Act 1891 s 72. As to denoting stamps see PARA 1024 ante.

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

256 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the

consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

257 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

258 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1079 Duplicate or counterpart of a chargeable instrument**

TEXT AND NOTES--Stamp Act 1891 s 72, Sch 1 replaced by Finance Act 1999 Sch 13 para 19 (amended by Finance Act 2008 Sch 32 para 10(3)(d)) by virtue of which no duty is now chargeable. This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

**1080. Partition or division of real property not chargeable as a conveyance on sale.**

An instrument[1] effecting a partition or division of any estate or interest in land is normally liable to stamp duty of 50 pence[2]. Where, however, upon the partition or division of real property, any consideration exceeding £100 in amount or value is paid or given, or agreed to be paid or given, for equality, the instrument effecting the partition or division is charged with the same ad valorem stamp duty as on a conveyance on sale for that consideration and with that duty only[3].

It would seem that the provisions which impose ad valorem conveyance on sale duty by reference to the discharge of debts[4], the assumption of liabilities[5] and the value of property given in exchange for land[6] do not apply to a partition or division of real property[7]. However, as a partition or division is chargeable by reference to the consideration for equality under the heading 'Conveyance or Transfer on Sale'[8], it would appear that the instrument may be certified[9] for the purpose of the stamp duty threshold where the consideration for equality does not exceed £60,000 and, if so certified, no duty is payable[10].

Where more than one instrument is used for completing the title of either party in such a transaction involving the payment of equality consideration, only the principal instrument is charged with ad valorem duty; the others are charged in the same manner[11] as in the case of several instruments of conveyance[12].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 Stamp Act 1891 s 1, Sch 1, 'Partition or Division'.

3 Ibid s 73 (amended by the Finance Act 1994 ss 241(3), (4), 258, Sch 26 Pt VII). As to the duty on conveyances on sale see PARA 1027 et seq ante.

4 As to the discharge of debts see the Stamp Act 1891 s 57; and PARA 1046 ante.

5 As to the assumption of liabilities see PARA 1046 ante.

6 See the Finance Act 1994 s 241(1); and PARA 1045 ante.

7 A partition is not a sale (*Henniker v Henniker*) (1852) 22 LJQB 94; *Macleod v IRC* (1885) 12 R 1045. As the Stamp Act 1891 s 73 directs that ad valorem conveyance on sale duty is to be imposed by reference only to the consideration given for equality, it would appear that s 57 is excluded. The application of the Finance Act 1994 s 241(1) would also seem to be inconsistent with the Stamp Act 1891 s 73: see PARA 1045 ante.

8 Ie the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

9 See PARAS 1027-1028 ante.

10 See PARA 1027 ante.

11 As to the position where several instruments complete the title see PARA 1038 ante.

12 Stamp Act 1891 s 73.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

259 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

260 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

261 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1080 Partition or division of real property not chargeable as a conveyance on sale**

TEXT AND NOTES 1-3, 11, 12--Stamp Act 1891 s 73, Sch 1 replaced by Finance Act 1999 Sch 13 para 21 (amended by Finance Act 2008 Sch 32 para 10(3)(e)) by virtue of which an instrument to which these provisions do not apply is not subject to duty. This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(4) INSTRUMENTS LIABLE TO FIXED DUTY/1081. Release or surrender not chargeable as a conveyance on sale.

**1081. Release or surrender not chargeable as a conveyance on sale.**

Stamp duty of 50 pence is charged on a release[1] or renunciation[2] of any property[3] or of any right or interest in any property[4] other than a release on sale[5]. An instrument of surrender of any kind whatsoever not charged with duty as a conveyance on sale[6] is also charged with fixed duty of 50 pence[7].

1 'Release' here extends beyond releases in the strict legal sense: *Great Northern Rly Co v IRC* [1899] 2 QB 652, DC (affd on another point [1901] 1 KB 416, CA: see PARA 1042 note 3 ante); *Platt's Trustees v IRC* (1953) 32 ATC 292. A disclaimer (which does not involve a disposition) is to be distinguished from a release (which does): eg, a disclaimer of a legacy is not liable, but a release made in favour of another person attracts 50p fixed duty. See also *Re Stratton's Disclaimer, Stratton v IRC* [1958] Ch 42, [1957] 2 All ER 594, CA; *Re Paradise Motor Co* [1968] 2 All ER 625, [1968] 1 WLR 1125, CA, where it was held that a disclaimer of a beneficial interest in shares transferred need not be in writing, since it is not a disposition of an equitable interest within the Law of Property Act 1925 s 53; such a disclaimer, if in writing, does not attract ad valorem duty under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended) (see PARA 1027 ante). The release of discharge of a mortgage or other security is not liable to duty: see PARA 1077 note 3 ante.

2 'Renunciation' is used in its Scottish sense (the equivalent of an English reconveyance or release); there is no conveyancing instrument known to English law as a renunciation: *Great Northern Rly Co v IRC* [1899] 2 QB 652 at 660, 661, DC, per Phillimore J.

3 For the meaning of 'property' see PARA 1032 ante.

4 Stamp Act 1891 Sch 1, 'Release or Renunciation' (amended by the Finance Act 1971 s 69(7), Sch 14 Pt VI).

5 Stamp Act 1891 Sch 1, 'Release or Renunciation' (as amended: see note 4 supra). As to the instruments chargeable as a conveyance on sale see PARA 1030 ante. As to conveyance on sale duty see PARA 1027 ante; and see, in this context, *Garnett v IRC* (1899) 81 LT 633, DC. Release to the surface owner, in consideration of money, of the right to work coal is not a sale: see PARA 1042 note 3 ante.

6 An agreement to surrender a lease may in certain circumstances be chargeable as a conveyance on sale: see PARA 1064 ante.

7 Stamp Act 1891 Sch 1, 'Surrender' (amended by the Finance Act 1949 s 52(9), (10), Sch 11 Pt V; and by the Finance Act 1971 s 61(7), Sch 14, Pt VI).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

262 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

263 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

264 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1081 Release or surrender not chargeable as a conveyance on sale

TEXT AND NOTES--Stamp Act 1891 Sch 1, replaced by Finance Act 1999 Sch 13 paras 22, 23, repealed by Finance Act 2008 Sch 32 para 10(3)(f), (g).

## (5) EXEMPTIONS FROM STAMP DUTY

## (i) Introduction

### 1082. Introduction.

The existence of an exemption in respect of an instrument of a particular kind or class does not necessarily imply that the instrument or class is liable to stamp duty under the present legislation[1]. A number of the exemptions set out in this section of this title relate to heads of charge which have been abolished[2]. They have been included because the nature of the charge[3] and the manner in which it is enforced[4] are such that an exemption may still be relevant in respect of an instrument which, but for the exemption, would have been chargeable because the instrument was executed prior to the abolition of the charge. It is also possible that an obsolete exemption may become effective by virtue of the introduction of new charging provisions[5].

In certain cases, an instrument will not be taken to be duly stamped unless it has been presented to the Commissioners of Inland Revenue for assessment, notwithstanding that the instrument is otherwise exempt[6].

1 As to the present charges and rates see PARA 1018 ante.

2 As to the heads of charge which have been abolished see PARAS 1002-1003 ante.

3 As to the nature of the charge to stamp duty see PARA 1010 ante.

4 As to the manner in which the charge is enforced see PARA 1007 ante.

5 See eg the Stamp Act 1891 s 77(1) (see PARA 1062 text and note 11 ante) which, in so far as it relates to the surrender of a lease, appears to have been obsolete and ineffective prior to the introduction of the Finance Act 1994 s 241(1).

6 See PARA 1111 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

265 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

266 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

267 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(ii) General Exemptions/1083. Exemption from fixed duty by certification.

## (ii) General Exemptions

### 1083. Exemption from fixed duty by certification.

The Treasury may make regulations providing that an instrument[1] which is of a kind specified in them and which would otherwise be chargeable with stamp duty of a fixed amount under any provision so specified is not to be charged with such duty under that provision if it is certified to be an instrument of that kind[2]. Such certification must be by such method as the regulations may specify, and in particular they may provide for a certificate to be borne by or attached to or otherwise associated with an instrument in such manner as they may specify[3]. Regulations so made may (1) contain such incidental or consequential provisions as the Treasury thinks fit[4]; and (2) make different provision for different cases or descriptions of case[5].

An instrument which is (a) executed[6] on or after 1 May 1987; (b) is of a specified kind[6]; and (c) is certified by a certificate which fulfils the prescribed conditions[8] to be an instrument of that kind, is exempt from duty under the heading 'Conveyance or Transfer of any kind not hereinbefore described'[9] and under the statutory provisions[10] relating to transfers in connection with divorce and instruments varying dispositions after death[11].

An instrument which is so certified is not required[12] to be stamped[13] with a particular stamp denoting that it is duly stamped or that it is not chargeable with any duty[14].

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1985 s 98(4)).

2 Ibid s 87(2). The power to make regulations under s 87 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 87(7). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

In exercise of the power so conferred, the Treasury has made the Stamp Duty (Exempt Instruments) Regulations 1987, SI 1987/516 (modified by SI 1991/2684), which came into force on 1 May 1987: reg 1. See the text and notes 6-14 infra.

3 Finance Act 1985 s 87(3). A certificate must be in such form and signed by such person as the regulations may specify: s 87(4).

4 Ibid s 87(5).

5 Ibid s 87(6).

6 For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of ibid s 98(4)).

7 Ie of a kind specified in the Stamp Duty (Exempt Instruments) Regulations 1987, reg 4, Schedule: reg 2(1)(b). An instrument which effects any one or more of the following transactions only is an instrument specified for these purposes:

5 (1) the vesting of property subject to a trust in the trustees of the trust on the appointment of a new trustee, or in the continuing trustees on the retirement of a trustee (Schedule para A);

6 (2) the conveyance or transfer of property (a) the subject of a specific devise or legacy to the beneficiary named in the will (or his nominee) (Schedule para B); (b) which forms part of an intestate's estate to the person entitled on intestacy (or his nominee) (Schedule para C); (c) which forms part of the residuary estate of a testator to a beneficiary (or his nominee) entitled solely by virtue of his entitlement under the will (Schedule para E); (d) out of a settlement in or towards satisfaction of a beneficiary's interest, not being an interest acquired for money or

money's worth, being a conveyance or transfer constituting a distribution of property in accordance with the provisions of the settlement (Schedule para F); (e) on and in consideration only of marriage to a party to the marriage (or his nominee) or to trustees to be held on the terms of a settlement made in consideration only of the marriage (Schedule para G); (f) within the Finance Act 1985 s 83(1) (transfers in connection with divorce etc: see PARA 1095 post) (Stamp Duty (Exempt Instruments) Regulations 1987 Schedule para H); (g) operating as a voluntary disposition inter vivos for no consideration in money or money's worth nor any consideration referred to in the Stamp Act 1891 s 57 (conveyance in consideration of a debt etc: see PARA 1046 ante) (Stamp Duty (Exempt Instruments) Regulations 1987 Schedule para L); and (h) by an instrument within the Finance Act 1985 s 84(1) (death: varying disposition) (see PARA 1089 post) (Stamp Duty (Exempt Instruments) Regulations 1987 Schedule para M);

7 (3) the appropriation of property within the Finance Act 1985 s 84(4) (death: appropriation in satisfaction of a general legacy of money) or s 84(5) (death: appropriation in satisfaction of any interest of surviving spouse) (see PARA 1089 post) (Stamp Duty (Exempt Instruments) Regulations 1987 Schedule para D);

8 (4) the conveyance or transfer by the liquidator of property which formed part of the assets of the company in liquidation to a shareholder of that company (or his nominee) in or towards satisfaction of the shareholder's rights on a winding up (Schedule para I);

9 (5) the grant in fee simple of an easement in or over land for no consideration in money or money's worth (Schedule para J);

10 (6) the grant of a servitude for no consideration in money or money's worth (Schedule para K).

8 The certificate (1) must be in writing and either included as part of the instrument or be indorsed upon or, where separate, be physically attached to the instrument concerned (ibid reg 3(a)); (2) must contain a sufficient description of (a) the instrument concerned where the certificate is separate but physically attached to the instrument; and (b) the category in the Schedule (see note 7 supra) into which the instrument falls (reg 3(b)). It must be signed by the transferor or grantor or by his solicitor or duly authorised agent and, where it is not signed by the transferor or grantor or by his solicitor (who may be a body corporate recognised for these purposes by the council of the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688), it must contain a statement by the signatory of the capacity in which he signs, that he is authorised so to sign and that he gives the certificate from his own knowledge of the facts stated in it: Stamp Duty (Exempt Instruments) Regulations 1987 reg 3(c) (modified by SI 1991/2684).

9 Ie the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described': see PARA 1077 ante.

10 Ie the Finance Act 1985 ss 83(2), 84(8): see PARAS 1095, 1089 respectively post.

11 Stamp Duty (Exempt Instruments) Regulations 1987 reg 2(1), (2).

12 Ie under the Finance Act 1985 ss 82(5) or 84(9): see PARAS 1095, 1089 respectively post.

13 Ie in accordance with the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

14 Stamp Duty (Exempt Instruments) Regulations 1987 reg 5.

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject

matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

268 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

269 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

270 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1082-1105 Exemptions from Stamp Duty

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

### 1083 Exemption from fixed duty by certification

NOTE 2--SI 1987/516 amended: SI 1999/2539.

NOTE 7--In head (2)(f) reference to s 83(1) is now to s 83(1), (1A): Schedule para H (amended by SI 2005/3230).

Also, heads (2)(h) the conveyance or transfer of property on and in consideration only of the formation of a civil partnership to a party to that partnership (or his nominee) or to trustees to be held on the terms of a settlement made in consideration only of the civil partnership (SI 1987/516 Schedule para GG (added by SI 2005/3230)); (7) the declaration of any use or trust of or concerning a life policy, or property representing, or benefits arising under, a life policy (SI 1987/516 Schedule para N (added by SI 1999/2539)). 'Life policy' means any policy of insurance on a human life, or on the happening of a contingency dependent on a human life, except a policy of insurance for a payment only on the death of a person otherwise than from a natural cause, or a grant or contract for the payment of an annuity on a human life: SI 1987/516 reg 1A (added by SI 1999/2539).

TEXT AND NOTE 9--For 'the heading ... not hereinbefore described' read 'the Finance Act 1999 Sch 13 paras 16 (see PARA 1077), 17 (see PARA 1078)': SI 1987/516 reg 2(2) (amended by SI 1999/2539).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(ii) General Exemptions/1084. Exemptions relating to the armed forces and visiting forces etc.

**1084. Exemptions relating to the armed forces and visiting forces etc.**

Exemption from stamp duty is accorded to naval, army and air force pensions[1] and to naval pay, salvage, bounty and prize money[2], to visiting forces[3] of designated[4] countries[5] and to designated allied headquarters[6].

1 See the Naval and Marine Pay and Pensions Act 1865 s 6 (amended by the Finance Act 1970 s 36(8), Sch 8 Pt V; and by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(2), Sch 1 Pt II) (naval pay and pensions); the Pensions and Yeomanry Pay Act 1884 s 5 (amended by the Finance Act 1949 s 52(10); and the Finance Act 1970 Sch 8 Pt V; applied to air force pensions by the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548 (amended by SI 1964/488)) (army and air force pensions); and the War Pensions Act 1920 s 10 (amended by the Finance Act 1970 Sch 8 Pt V) (war pensions). Exemption is also accorded to certain documents relating to naval, army and air force barracks and camps (see the Barracks Act 1890 s 11 (amended by the Air Force (Application of Enactments) (No 1) Order 1918, SR & O 1918/538; the Finance Act 1944 s 46; and by the Defence (Transfer of Functions) (No 1) Order 1964 Sch 1 Pt II)); but it is thought that this provision is now obsolete.

2 See the Naval Agency and Distribution Act 1864 s 16 (amended by the Finance Act 1970 Sch 8 Pt V; and by the Defence (Transfer of Functions) (No 1) Order 1964 Sch 1 Pt II).

3 'Visiting force' means any body, contingent or detachment of a country's forces present in the United Kingdom on the invitation of the United Kingdom government: Finance Act 1960 s 74(6)(c). As to visiting forces generally see ARMED FORCES. For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

4 'Designated' means designated by an Order in Council (ibid s 74(6)(b)), which may be varied or revoked by a subsequent Order in Council (s 74(7)).

5 Ibid s 74(1), (2), which exempts from stamp duties contracts, conveyances and other documents made with a view to enlarging barracks or camps for visiting forces, or to facilitating their training in the United Kingdom or promoting their health or efficiency. The following countries have been designated: Belgium, Canada, Denmark, France, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Turkey and the United States of America (Visiting Forces and Allied Headquarters (Stamp Duties) (Designation) Order 1961, SI 1961/581), and the former Federal Republic of Germany (Visiting Forces (Stamp Duties) (Designation) Order 1964, SI 1964/925).

6 Finance Act 1960 s 74(5), applying the exemption referred to in note 6 supra, to allied headquarters. 'Allied headquarters' means any international military headquarters established or to be established under the North Atlantic Treaty (Washington, 4 April 1949; TS 56 (1949); Cmd 7789): Finance Act 1960 s 74(6)(a). The following headquarters have been designated by the Visiting Forces and Allied Headquarters (Stamp Duties) (Designation) Order 1961: Supreme Headquarters, Allied Powers Europe; Headquarters, Allied Forces Northern Europe; Headquarters, Allied Forces Central Europe; Headquarters, Allied Naval Forces Northern Area Central Europe; Headquarters, Northern Army Group; Headquarters, Second Allied Tactical Air Force; Headquarters, Central Army Group; Headquarters, Fourth Allied Tactical Air Force; Headquarters, Allied Forces Southern Europe; Headquarters, Allied Land Forces Southern Europe; Headquarters, Fifth Allied Tactical Air Forces; Headquarters, Allied Land Forces South-Eastern Europe; Headquarters, Sixth Allied Tactical Air Force; Headquarters, Allied Forces Mediterranean; Allied Command Atlantic Headquarters; Eastern Atlantic Command; Western Atlantic Command; Channel Committee; Channel Command.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125

(amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

271 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

272 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

273 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1084 Exemptions relating to the armed forces and visiting forces etc**

TEXT AND NOTES--A similar exemption is accorded for stamp duty land tax purposes: Finance Act 1960 s 74A (added by SI 2003/2867).

NOTE 1--Naval and Marine Pay and Pensions Act 1865 s 6 repealed: Armed Forces Act 2006 Sch 17. Barracks Act 1890, Finance Act 1944 s 46 repealed: Statute Law (Repeals) Act 2008.

NOTE 2--Naval Agency and Distribution Act 1864 s 16 repealed: Armed Forces Act 2006 Sch 17.

NOTE 5--The following countries have also been designated: Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic, Slovenia, Spain and Sweden (Visiting Forces and Allied Headquarters (Stamp Duties) (Designation) Order 1998, SI 1998/1517), and Armenia, Austria, Azerbaijan, Belarus, Finland, Georgia, Kazakhstan, Kyrgyzstan, the Former Yugoslav Republic of Macedonia, Moldova, Russia, Switzerland, Turkmenistan, Ukraine and Uzbekistan (Visiting Forces (Stamp Duties) (Designation Order) 1998, SI 1998/1518).

NOTE 6--The headquarters of the Supreme Allied Commander Atlantic (SACLANT), Eastern Atlantic (EASTLANT), Maritime Air Eastern Atlantic (MARAIREASTLANT), Submarine Forces Eastern Atlantic (SUBEASTLANT), Allied Forces North Western Europe (AFNORTHWEST), Allied Naval Forces North Western Europe (NAVNORTHWEST), Allied Air Forces North Western Europe (AIRNORTHWEST), and NATO Airborne Early Warning Force Headquarters and NATO E-3A Component have also been designated: Visiting Forces and Allied Headquarters (Stamp Duties) (Designation) Order 1998, SI 1998/1517.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(ii) General Exemptions/1085. Exemption in respect of maintenance funds for historic buildings.

**1085. Exemption in respect of maintenance funds for historic buildings.**

There is an exemption from stamp duty on any instrument by which property ceases to be comprised in a settlement if, as a result of the property or part of it becoming comprised in another settlement (otherwise than by virtue of the instrument itself), there is no charge to inheritance tax[1] in respect of the property ceasing to be comprised in the settlement, or a reduced charge to that tax[2]; but, where only part of the property becomes comprised in the other settlement, the stamp duty exemption does not affect the stamp duty chargeable on the instrument by reference to the other part[3]. To obtain the exemption adjudication[4] is required[5].

1 Ie by virtue of the Inheritance Tax Act 1984 s 77, Sch 4 paras 9(1) or 17(1): see INHERITANCE TAXATION vol 24 (Reissue) PARAS 552, 550 respectively. As to inheritance tax generally see INHERITANCE TAXATION vol 24 (Reissue) PARA 401 et seq; and as to maintenance funds for historic buildings see INHERITANCE TAXATION vol 24 (Reissue) PARA 548 et seq.

2 Ie by virtue of ibid Sch 4 paras 9(4) or 17(4): see INHERITANCE TAXATION vol 24 (Reissue) PARAS 552, 550 respectively.

3 Finance Act 1980 s 98(1) (amended by the Inheritance Tax Act 1984 s 276, Sch 8 para 19; and by virtue of the Finance Act 1986 s 100).

4 Ie under the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

5 See the Finance Act 1980 s 98(2).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

274 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an

interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

275 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

276 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning

given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1086. Exemptions relating to nationalisation, reconstruction, privatisation and reorganisation.**

Stamp duty is not payable on any conveyance, agreement or assignment made, or instrument[1] executed[2] solely for the purpose of giving effect to a transfer, as part of the initial putting into force[3] of a nationalisation scheme, of any property to the Crown or to a body corporate constituted for the purposes of that scheme or any previous nationalisation scheme[4]. Provision is made for exempting from stamp duty transfers of Treasury-guaranteed stock issued by bodies corporate constituted for the purpose of nationalisation schemes[5] and transfers of shares, stock, debentures, debenture stock and other securities of a body, the undertaking of which has been nationalised, which may be made during any interval between the date of the transfer of the undertaking and the date when the shares, stock etc are exchanged for stock of the body to which the undertaking has been transferred[6].

Certain exemptions from stamp duty have been conferred in connection with the reorganisation of the aircraft and shipbuilding industries[7]. Relief from conveyance on sale duty[8] is granted to agreements made under certain statutory powers[9] by a new town development corporation[10] for the transfer of the whole or part of its water undertaking or sewerage undertaking and to any conveyance, agreement or assignment made or instrument executed solely for the purpose of giving effect to such a transfer[11].

Transfers of property in connection with the privatisation of certain utilities are exempt from stamp duty[12] as are transfer schemes relating to certain public employees[13]. Where any conveyance, transfer or lease is made or agreed to be made to a National Health Service Trust[14], no stamp duty is chargeable[15] on the instrument by which the conveyance, transfer or lease, or the agreement for it, is effected[16]. Certain instruments executed pursuant to the provisions for the establishment of British Telecommunications were exempted from stamp duty[17].

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1946 s 67(7)).

2 For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of ibid s 67(7)).

3 For the meaning of 'initial putting into force' in relation to the nationalisation of electricity see the Electricity Act 1957 s 26(6) (repealed). As to privatisation of the electricity industry see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1034 et seq.

4 Finance Act 1946 s 52(c). As to the calculation of duty under the Finance Act 1895 s 12 see the Finance Act 1946 s 52(a); and PARA 1050 note 4 ante.

5 See the Finance Act 1947 s 57 (as amended); and PARA 1100 ante.

6 See the Finance Act 1948 s 74 (prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day). For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

7 See the Aircraft and Shipbuilding Industries Act 1977 s 29, Sch 4 para 7, which also excludes the Finance Act 1895 s 12 (see PARA 1050 ante); and the Aircraft and Shipbuilding Industries Act 1977 s 35(9), Sch 5 para 8, which applies the Finance Act 1948 s 74 (see the text and note 6 supra).

8 Ie duty chargeable under or by reference to the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 et seq ante.

9 Ie under the New Towns Act 1981 s 39 (as amended): see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1405.

10 As to development corporations see ibid s 3; and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1322 et seq.

11 Finance Act 1958 s 35(5); Interpretation Act 1978 s 17(2)(a). This provision has effect from 1 August 1958: Finance Act 1958 s 35(6).

12 See eg the Electricity Act 1989 s 90, Sch 11. See also the Coal Industry Act 1994 s 21, Sch 4 paras 26-27 (exemption from stamp duty), Sch 4 para 28 (exemption from stamp duty reserve tax). As to stamp duty reserve tax see PARA 1118 post; and as to its prospective abolition see PARA 1119 post.

13 See eg the Parliamentary Corporate Bodies Act 1992 s 5(4). An instrument which is certified as such a scheme is not, however, admissible in evidence unless stamped with a particular stamp denoting that it is not chargeable to duty: see s 5(5).

14 Ie a National Health Service Trust established under the National Health Service and Community Care Act 1990 Pt I (ss 1-26) (as amended). See also HEALTH SERVICES vol 54 (2008) PARA 155 et seq.

15 Ie under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended) (see PARA 1027 et seq ante), Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described' (see PARA 1077 ante) or Sch 1, 'Lease or Tack' (as amended) (see PARA 1058 ante). See also PARA 1054 note 1 ante.

16 National Health Service and Community Care Act 1990 s 61(3).

17 See the British Telecommunications Act 1981 s 81(1). As to the vesting of that corporation's undertaking in British Telecommunications plc and the subsequent dissolution of that corporation see the Telecommunications Act 1984 Pt V (ss 60-73) (as amended); and TELECOMMUNICATIONS vol 97 (2010) PARAS 58, 74.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

> 277 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the

consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

278 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

279 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

## 1082-1105 Exemptions from Stamp Duty

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

### 1086 Exemptions relating to nationalisation, reconstruction, privatisation and reorganisation

NOTE 7--Aircraft and Shipbuilding Industries Act 1977 s 29, Sch 4 para 7, s 35(9), Sch 5 para 8 repealed: Statute Law (Repeals) Act 2004.

NOTES 8, 15--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pts I (paras 1-9), II (paras 10-15): Sch 14 para 24. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

TEXT AND NOTES 14-16--Now, where any conveyance, transfer or lease is made or agreed to be made to the body, no stamp duty is chargeable under ibid Sch 13 Pts I, II on the instrument by which the conveyance, transfer, lease, or the agreement for it, is effected: National Health Service and Community Care Act 1990 s 61(3)(a) (s 61(3), (3A)-(3C) substituted by SI 2005/82). Where the body is the purchaser in relation to a land transaction, the land transaction is exempt from charge for the purposes of stamp duty land tax: National Health Service and Community Care Act 1990 s 61(3)(b). For the meaning of 'purchaser' see PARA 1117A.2; and for the meaning of 'land transaction' see PARA 1117A.1; definitions applied by virtue of s 61(3C). For these purposes, the bodies are (1) a National Health Service trust established under Pt I; (2) a primary care trust; and (3) a local health board: s 61(3A). Relief under s 61(3)(b) must be claimed in a land transaction return or an amendment of such a return: s 61(3B). In s 61, 'land transaction return' must be construed in accordance with the Finance Act 2003 s 76(1) (see PARA 1117A.26): National Health Service and Community Care Act 1990 s 61(3C).

1990 Act s 61(3) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 132.

1990 Act s 61(3) applies to an NHS foundation trust as it applies to an NHS trust: National Health Service Act 2006 s 58.

NOTE 11--Finance Act 1958 s 35 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(ii) General Exemptions/1087. Exemptions relating to national savings etc.

## 1087. Exemptions relating to national savings etc.

Exemptions from stamp duty exist in favour of certain documents relating to national savings[1], the National Savings Bank[2], and gifts and trusts for the reduction of the National Debt[3].

No transfer effected as a result of the reorganisation of the former trustee savings banks[4] gave rise to any liability to stamp duty[5].

1 See the Finance Act 1953 s 31(1)(b) (amended by the Finance Act 1970 s 36(8), Sch 8 Pt V; and by the Finance Act 1971 s 69(7), Sch 14 Pt VI) (agreements by which a person acting for a savings committee, savings group or similar body makes himself responsible for money, stamps or other things supplied for the purposes of the body). As to savings certificates see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1352 et seq.

2 See the National Savings Bank Regulations 1972, SI 1972/764, reg 50 (documents relating solely to the payment or receipt of money deposited in the bank). As to the bank see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 810 et seq.

3 See the Finance Act 1928 s 30(4) (instruments by which property is transferred to trustees to be held on trust in accordance with directions valid and effective under the Superannuation and other Trust Funds (Validation) Act 1927 s 9 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1333; and TRUSTS vol 48 (2007 Reissue) PARA 686), or by which property is conveyed by way of gift to the National Debt Commissioners to be applied in the reduction of the National Debt).

4 Ie a transfer effected by the Trustee Savings Banks Act 1985 s 3: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 811.

5 Ibid s 5, Sch 2 para 8.

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

280 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable

interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

281 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

282 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a

duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1088. Exemptions relating to shipping.**

No stamp duty is chargeable in respect of (1) instruments[1] for the sale, transfer or other disposition, either absolutely or otherwise, of a ship or vessel[2] or any part, interest, share or property of or in any ship or vessel[3]; (2) instruments for carrying into effect certain parts of the merchant shipping legislation[4]; (3) certain assignments of seamen's wages[5]; and (4) charterparties[6].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 As to the meaning of 'ship' and 'vessel' see the Merchant Shipping Act 1894 s 742; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 255. Section 742 is prospectively repealed by the Merchant Shipping Act 1995 s 314(1), Sch 12, as from 1 January 1996 (s 316(2)); and replaced by s 313 thereof.

3 Stamp Act 1891 s 1, Sch 1, 'General Exemptions from all Stamp Duties' para (2) (amended by the Finance Act 1971 s 69(7), Sch 14 Pt VI). The instrument must have the sale, transfer or other disposition of a ship or vessel as its primary object: *Deddington SS Co Ltd v IRC* [1911] 2 KB 1001, CA. It is not clear whether transfers of equitable interests in ships are exempt: *Deddington SS Co Ltd v IRC* supra at 1008, 1010. There is no general exemption from stamp duty in respect of the transfer of an aircraft.

4 See the Merchant Shipping Act 1894 s 721(a), exempting instruments used for carrying into effect Pt I (ss 1-91) (registry) (largely repealed: see now the Merchant Shipping (Registration etc) Act 1993 ss 1-10); the Merchant Shipping Act 1894 s 721(b), exempting instruments used by or under the direction of the Secretary of State in carrying into effect Pt II (ss 92-266) (as amended) (masters and seamen), Pt V (ss 420-463) (as amended) (safety), Pt XI (ss 634-675) (as amended) (lighthouses) and Pt XII (ss 676-679) (as amended) (Mercantile Marine Fund); and s 721(c), which exempts any instruments which are by those parts required to be in a form approved by the Secretary of State, if made in that form. The reference to Pt II (as amended) is prospectively repealed by the Merchant Shipping Act 1970 s 100(3), Sch 5, from a day to be appointed by order under s 101(4), but at the date at which this volume states the law no such order had been made. The Merchant Shipping Act 1894 s 721 and the Merchant Shipping Act 1970 ss 100, 101 and Sch 5 are all prospectively repealed as from 1 January 1996: see the Merchant Shipping Act 1995 s 316(2), Sch 12.

5 See the Finance Act 1944 s 45, which, by virtue of the Interpretation Act 1978 s 17(2)(a), exempts assignments rendered valid by the Merchant Shipping Act 1970 s 11(3) (relating to assignments in payment of contributions to certain bodies representing the interests of or providing benefits for seamen). Section 11(3) is prospectively repealed as from 1 January 1996: see the Merchant Shipping Act 1995 s 316(2), Sch 12.

6 Finance Act 1949 s 35(1), Sch 8 Pt I para 9. 'Charterparty' includes any agreement or contract for the charter of any ship or vessel, or any memorandum, letter or other writing between the captain, master or owner of any ship or vessel and any other person for or relating to the freight or conveyance of money, goods or effects on board the ship or vessel: Stamp Act 1891 s 49(1) (definition applied by virtue of the Finance Act 1949 s 52(5)). The stamp duty on charterparties has been abolished (see PARA 1003 head (3) ante) and the exemption would therefore seem to be obsolete. As to charterparties generally see CARRIAGE AND CARRIERS vol 7 (2008) PARA 205 et seq.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s

125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

283 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

284 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

285 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely

on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105  Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1088  Exemptions relating to shipping**

TEXT AND NOTES 1-3--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 para 24(b). This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2). For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

NOTE 6--Stamp Act 1891 s 49 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(ii) General Exemptions/1089. Exemption for testamentary instruments, instruments varying dispositions after death and appropriations by personal representatives.

**1089. Exemption for testamentary instruments, instruments varying dispositions after death and appropriations by personal representatives.**

Testamentary dispositions are exempt from all stamp duties[1].

Where, within the period of two years after a person's death, any of the dispositions, whether effected by will, under the law relating to intestacy or otherwise, of the property of which he was competent to dispose are varied by an instrument[2] executed[3] by the persons or any of the persons who benefit or would benefit under the dispositions, conveyance on sale duty[4] is not chargeable on the instrument[5]. This exemption applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions[6] but does not apply where the variation is made for any consideration in money or money's worth other than consideration consisting of the making of a variation in respect of another of the dispositions[7].

Where property is appropriated by a personal representative in or towards satisfaction of a general legacy of money, conveyance on sale duty is not chargeable on an instrument giving effect to the appropriation[8].

Where on an intestacy property is appropriated by a personal representative in or towards satisfaction of any interest of a surviving husband or wife in the intestate's estate[9], conveyance on sale duty is not chargeable on an instrument giving effect to the appropriation[10].

By extra-statutory concession, stamp duty is not claimed on transfer of stock in a company registered in England, Wales or Northern Ireland from a person to himself, or from two or more persons to themselves, which operates as an executor's assent[11].

An instrument giving effect to a variation or appropriation in respect of which stamp duty is not chargeable by virtue only of these exemptions[12] is chargeable with stamp duty of 50 pence[13]; but an instrument so chargeable is not treated as duly stamped unless it has been stamped[14] with a particular stamp denoting that it is duly stamped[15]. The instrument is, however, exempted from the duty of 50 pence and the need for a stamp if it is certified in accordance with the relevant regulations[16].

1 Stamp Act 1891 s 1, Sch 1, 'General Exemptions from all Stamp Duties' para (4). There is also a complete exemption for guarantees given by sureties as a condition of the granting by the High Court of administration to any person (Supreme Court Act 1981 s 120(4)), but as all the relevant heads of charge seem to have been repealed, the exemption would appear to be obsolete.

2 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1985 s 98(4)).

3 For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of ibid s 98(4)).

4 Ie stamp duty chargeable under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 et seq ante.

5 Finance Act 1985 s 84(1). Subject to s 84(11) (see note 10 infra), s 84 applies to instruments executed on or after 26 March 1985 and is deemed to have come into operation on that date: s 84(10).

6 Ibid s 84(3).

7 Ibid s 84(2).

8 Ibid s 84(4).

9 The reference to an interest in the intestate's estate includes a reference to the capital value of a life interest which the surviving husband or wife has under the Intestates' Estates Act 1925 elected to have redeemed: Finance Act 1985 s 84(6).

10 Ibid s 84(5). Section 84(5), (6) and, so far as it relates to s 84(5), s 84(8) (see the text and note 12 infra) applies to instruments executed on or after 1 August 1985: s 84(11).

11 Inland Revenue booklet IR 1 (1992) G5.

12 Ie by virtue of the Finance Act 1985 s 84(1), (4) or (5): s 84(8).

13 Ibid s 84(8). See also note 10 supra.

14 Ie in accordance with the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

15 Finance Act 1985 s 84(9).

16 See the Stamp Duty (Exempt Instrument) Regulations 1987, SI 1987/516, reg 4, Schedule paras D, M; and PARA 1083 note 7 heads (2)(h), (3) ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

286 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

287 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch

15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

288 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

### 1089 Exemption for testamentary instruments, instruments varying dispositions after death and appropriations by personal representatives

TEXT AND NOTES--These provisions (as amended: see infra) do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20 Pt V(2).

The stamp duty charge on instruments transferring goodwill is abolished: see PARA 1089A.

TEXT AND NOTE 1--Stamp Act 1891 Sch 1 now Finance Act 1999 Sch 13 Pt I (paras 1-9).

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

TEXT AND NOTE 9--Reference to husband or wife is now to spouse or civil partner: Finance Act 1985 s 84(5), (6) (amended by SI 2005/3229).

TEXT AND NOTE 11--Inland Revenue booklet IR1 (1992) now IR1 (2000).

TEXT AND NOTES 12-16--The duty is increased to £5: Finance Act 1999 Sch 14 para 11.

**1089A. Exemption for goodwill.**

No stamp duty is chargeable on an instrument[1] for the sale, transfer or other disposition of goodwill[2].

Where stamp duty is chargeable[3] on an instrument that relates partly to goodwill and partly to property other than goodwill, the consideration in respect of which duty would otherwise be charged is to be apportioned, on a just and reasonable basis, as between the goodwill and the other property, and the instrument is to be charged only in respect of the consideration attributed to the other property[4].

1 For the meaning of 'instrument' see PARA 1001 (definition applied by the Finance Act 2002 s 116(3)).

2 Ibid s 116(1).

3 Ie under the Finance Act 1999 Sch 13 Pt I (paras 1-9).

4 Finance Act 2002 s 116(2), Sch 37 para 1.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

289 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual

consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

290 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

291 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

## (iii) Exemptions relating to Conveyances, Leases etc

### 1090. Exemption from ad valorem duty for conveyance or lease between associated bodies corporate.

Relief from ad valorem duty[1] is granted for conveyances, leases and agreements for lease between associated bodies corporate[2].

Stamp duty under the heading 'Conveyance or Transfer on Sale'[3] is not chargeable on any instrument[4] where it is shown to the satisfaction of the Commissioners of Inland Revenue that its effect is to convey or transfer a beneficial interest in property from one body corporate to another and that the bodies in question are associated[5] at the time the instrument is executed[6].

Stamp duty under the heading 'Lease or Tack'[7] is not chargeable on an instrument which is a lease, an agreement for a lease, or an agreement with respect to a letting where it is shown to the satisfaction of the commissioners that (1) the lessor is a body corporate and the lessee is another body corporate; (2) those bodies are associated at the time the instrument is executed; (3) in the case of an agreement, the agreement is for the lease or letting to be granted to the lessee or to a body corporate which is associated with the lessee at the time the instrument is executed; and (4) the instrument is not executed in pursuance of or in connection with an arrangement falling within heads (a) and (b) below[8].

The relief is not available if the instrument is executed in pursuance of, or in connection with, an arrangement whereby (a) the consideration, or any part of the consideration, was to be provided or received, directly or indirectly, by a person other than a body corporate which at the relevant time[9] was associated with the transferor or transferee[10] or with the lessor or lessee[11]; or (b) the parties were to cease to be associated by reason of the transferor or a third body corporate ceasing to be the transferee's parent body[12] or the lessor or a third body corporate ceasing to be the lessee's parent body[13]; or (c) in relation to a conveyance, the beneficial interest conveyed was previously conveyed or transferred by a person other than an associated body corporate[14]. In all such cases the instrument is not deemed to be duly stamped[15] unless it is either stamped with the duty to which it would, but for the relief, be liable or has been stamped[16] with an adjudication stamp denoting that it is not chargeable with any duty or that it is duly stamped[17].

1 Ie duty chargeable under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended) and 'Lease or Tack' (as amended): see PARA 1027 et seq, 1054 et seq ante.

2 See the Finance Act 1930 s 42 (as amended: see notes 5-17 infra) (conveyances); and the Finance Act 1995 s 151 (leases). See also *Escoigne Properties Ltd v IRC*[1958] AC 549, [1958] 1 All ER 406, HL. As to stamp duty reliefs in connection with company reconstructions and acquisitions see PARAS 1091-1092, 1097 post.

3 Ie under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

4 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1930 s 53(4)).

5 For these purposes, and for the purposes of the Finance Act 1995 s 151 (see the text and notes 7-9 infra), bodies corporate are associated at a particular time if at that time one is the parent of the other or another body corporate is the parent of each: Finance Act 1930 s 42(2A) (s 42(2A), (2B) added by the Finance Act 1995 s 149(1), (3)); Finance Act 1995 s 151(7). One body corporate is the parent of another at a particular time if at

that time the first body is beneficial owner of not less than 75% of the ordinary share capital of the second body: Finance Act 1930 s 42(2B) (as so added)); Finance Act 1995 s 151(8). Beneficial ownership is ownership either directly or through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, and the Finance Act 1938 s 42(2), Sch 4 Pt I (determination of amount of capital held through other bodies corporate) applies for the purposes of the relief: Finance Act 1930 s 42(3) (substituted by the Finance Act 1967 s 27(2); amended by the Finance Act 1995 s 149(1), (4)); Finance Act 1995 s 151(10). 'Ordinary share capital', in relation to a body corporate, means all the issued share capital, by whatever name called, of the body corporate other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the body corporate: Finance Act 1930 s 42(4) (added by the Finance Act 1995 s 149(1), (5)); Finance Act 1995 s 151(9). Prior to the Finance Act 1995, the Finance Act 1930 s 42 (as amended) referred to 'issued share capital' and it was held that the amount of issued share capital is calculated by adding up the nominal value of the shares issued without regard either to market value or to different classes of share: *Canada Safeway Ltd v IRC*[1973] Ch 374, [1972] 1 All ER 666. Shares which have not yet been registered are not regarded as issued for this purpose: *Holmleigh (Holdings) Ltd v IRC* (1958) 46 TC 435; *National Westminster Bank plc v IRC*[1995] 1 AC 119, [1994] 3 All ER 1, HL.

6 Finance Act 1930 s 42(2) (substituted by the Finance Act 1967 s 27(2); amended by the Finance Act 1995 s 149(1), (2)). For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of the Finance Act 1930 s 53(4)).

7 Ie under the Stamp Act 1891 Sch 1, 'Lease or Tack' (as amended): see PARA 1058 ante. See also PARA 1054 note 1 ante.

8 Finance Act 1995 s 151(1), (2). For these purposes, references to the lessor are to the person granting the lease or, in the case of an agreement, agreeing to grant the lease or letting; and references to the lessee are to the person being granted the lease or, in the case of an agreement, agreeing for the lease or letting to be granted to him or another: s 151(6).

9 The relevant time is the time of the execution of the instrument: Finance Act 1967 s 27(3)(a) (conveyances); Finance Act 1995 s 151(3) (leases).

10 Finance Act 1967 s 27(3)(a). Without prejudice to the generality of s 27(3)(a), an arrangement is treated as within s 27(3)(a) if it is one under which the transferor or the transferee, or a body corporate associated with either as there mentioned, was to be enabled to provide any of the consideration, or was to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a body corporate so associated: s 27(3).

11 Finance Act 1995 s 151(3)(a). Without prejudice to the generality of s 151(3)(a), an arrangement is treated as within s 151(3)(a) if it is one under which the lessor or the lessee, or a body corporate associated with either at the relevant time, was to be enabled to provide any of the consideration, or was to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a body corporate so associated: s 151(4).

12 Finance Act 1967 s 27(3)(c) (amended by the Finance Act 1995 s 149(6)).

13 Finance Act 1995 s 151(3)(b).

14 Finance Act 1967 s 27(3)(b).

15 As to the inadmissibility in evidence of instruments not duly stamped see the Stamp Act 1891 s 14(4); and PARA 1007 ante. For the meaning of 'duly stamped' see PARA 1007 note 9 ante.

16 Ie under ibid s 12 (as amended): see PARA 1111 post.

17 Finance Act 1930 s 42(1) (conveyances); Finance Act 1995 s 151(5) (leases).

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act

2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

292 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

293 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

294 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1082-1105 Exemptions from Stamp Duty

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

### 1090 Exemption from ad valorem duty for conveyance or lease between associated bodies corporate

TEXT AND NOTES--For the Inland Revenue's view of the practical application of these provisions, see Statement of Practice SP 3/98.

Group relief is withdrawn where there is a claim to the relief on an instrument which transfers land, and the transferee company leaves the group within two years of the execution of the instrument: see PARA 109A.

NOTE 1--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt II (paras 10-15). The second head of charge is now simply 'Lease': Sch 14 para 33. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

TEXT AND NOTES 3-6-The exemption does not apply where arrangements are in existence by virtue of which at that or some later time any person has or could obtain, or any persons together have or could obtain, control of the transferee but not of the transferor: Finance Act 1930 s 42(2) (amended by Finance Act 2000 s 123(1)-(3)). 'Control' is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 840 (see INCOME TAXATION vol 23(1) (Reissue) PARA 845): Finance Act 1930 s 42(7) (added by Finance Act 2000 s 123(1), (6)).

For the treatment of transfers between connected companies see PARA 1030.

NOTE 5--One body corporate is the parent of another at a particular time if at that time the first body (1) is the beneficial owner of not less than 75 per cent of the ordinary share capital of the second body; (2) is beneficially entitled to not less than 75 per cent of any profits available for distribution to equity holders of the second body; and (3)

would be beneficially entitled to not less than 75 per cent of any assets of the second body available for distribution to its equity holders on a winding up: Finance Act 1930 s 42(2B) (amended by Finance Act 2000 s 123(1), (4)); Finance Act 1995 s 151(8) (amended by Finance Act 2000 s 125(1), (4)). Finance Act 1930 s 42(3) further amended: Finance Act 2000 s 123(1), (6). Finance Act 1995 s 151(10) amended: Finance Act 2000 s 125(1), (5)). Income and Corporation Taxes Act 1988 Sch 18 (except Sch 18 paras 5(3), 5B-5E) applies for the purposes of heads (2), (3) as it applies for the purposes of s 413(7) (see INCOME TAXATION vol 23(2) (Reissue) PARA 953): Finance Act 1930 s 42(5), (6) (added by Finance Act 2000 s 123(1), (6)); Finance Act 1995 s 151(10A), (10B) (added by Finance Act 2000 s 125(1), (6)).

TEXT AND NOTES 7, 8--The exemption does not apply where, at the time the instrument is executed, arrangements are in existence by virtue of which at that or some later time any person has or could obtain, or any persons together have or could obtain, control of the lessee but not of the lessor: Finance Act 1995 s 151(1), (4A) (s 151(1) amended by Finance Act 2000 s 125(2); Finance Act 1995 s 151(4A) added by Finance Act 2000 s 125(3)). 'Control' is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 840 (see INCOME TAXATION vol 23(1) (Reissue) PARA 845): Finance Act 1995 s 151(10C) (added by Finance Act 2000 s 125(1), (6)).

For the treatment of leases between connected companies see PARA 1030.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1090A. Withdrawal of group relief.

**1090A. Withdrawal of group relief.**

Where:

84 (1) an instrument[1] ('the relevant instrument') transferring land in the United Kingdom[2] from one company[3] ('the transferor company') to another ('the transferee company') has been stamped on the basis that group relief[4] applies;
85 (2) before the end of the period of three years beginning with the date on which the instrument was executed, the transferee company ceases to be a member of the same group[5] as the transferor company; and
86 (3) at the time when the transferee company ceases to be a member of the same group as the transferor company, it or a relevant associated company holds an estate or interest in land that was transferred[6] to the transferee company by the relevant instrument (or that is derived from an estate or interest that was so transferred) and that has not subsequently been transferred at market value by a duly-stamped instrument on which ad valorem duty was paid and in respect of which group relief was not claimed, then:

13

15. (a) group relief in relation to the relevant instrument, or an appropriate proportion[7] of it, is withdrawn; and
16. (b) the stamp duty that would have been payable on stamping the relevant instrument but for group relief if the estate or interest in land transferred by that instrument had been transferred at market value, or an appropriate proportion of the duty that would have been so paid, is payable by the transferee company within 30 days after that company ceases to be a member of the same group as the transferor company[8].

14

The provisions above do not apply if the transferee company ceases to be a member of the same group a the transferor company as a result of an acquisition of shares by another company ('the parent company') in relation to which acquisition relief[9] applies, and the transferee company is immediately after that acquisition a member of the same group as the parent company ('the new group')[10].

The transferee must notify the Commissioners of Inland Revenue of:

87 (i) the date on which it ceased to be a member of the same group as the transferor company;
88 (ii) the relevant land[11] held by it at that time;
89 (iii) the nature of the relevant instrument, the date on which it was executed, the parties to the instrument, and the date on which the instrument was stamped;
90 (iv) the market value of the land transferred to it by the relevant instrument at the date on which that instrument was executed; and
91 (v) the amount of duty and interest payable by it under these provisions[12].

Where an amount is payable under the provisions above by the transferee company, a notice of determination of the amount payable has been issued by the Commissioners, and the whole

or part of that amount remains unpaid six months after the date on which it became payable, the Commissioners may serve a notice on any specified person[13] requiring him, within 30 days of the service of the notice, to pay the unpaid amount[14].

1 For the meaning of 'instrument' see PARA 1001 (definition applied by the Finance Act 2002 s 111(6), Sch 34 para 11).

2 For the meaning of 'United Kingdom' see PARA 1007 NOTE 6. Where the relevant instrument transfers land in the United Kingdom together with other property, the Finance Act 2002 s 111, Sch 34 apply as if there were two separate instruments, one relating to land in the United Kingdom, and the other relating to other property: s 111(7).

3 'Company' includes any body corporate: ibid s 111(5)(b).

4 Ie relief under the Finance Act 1930 s 42 (see PARA 1090), the Finance (Northern Ireland) Act 1954 s 11, or the Finance Act 1995 s 151 (see PARA 1090): Finance Act 2002 s 111(4).

5 References to a company's being in the same group as another company are to the companies being associated bodies corporate within the meaning of the relevant group relief provision (see NOTE 4): ibid s 111(5)(c). Section 111 does not apply if the transferee company ceases to be a member of the same group as the transferor company by reason of the latter company leaving the group; and the transferor company is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in the transferor company or in another company that as a result of the transaction ceases to be a member of the same group as the transferee company (s 111(6), Sch 34 para 2), nor does s 111 apply if the transferee company ceases to be a member of the same group as the transferor company by reason of anything done for the purpose of, or in the course of, winding up the transferor company of another company that is above the transferor company in the group structure; and for this purpose, a company is 'above' the transferor company in the group structure if it is the parent (within the meaning of the relevant group relief provision) of the transferor company or of another company that is above the transferor company in the group structure (Sch 34 para 3).

6 References to the transfer of land include the grant or surrender of an estate or interest in or over land: ibid s 111(5)(a).

7 'An appropriate proportion' means an appropriate proportion having regard to what was transferred to the transferee company by the relevant instrument and what is held by that company or, as the case may be, that company and any relevant associated companies, at the time it or they cease to be members of the same group as the transferor company: ibid s 111(3) (amended by the Finance Act 2003 s 126(4). 'Relevant associated company', in relation to the transferee company, means a company that (1) is a member of the same group as the transferee company immediately before that company ceases to be a member of the same group as the transferor company; and (2) ceases to be a member of the same group as the transferor company in consequence of the transferee company so ceasing: Finance Act 2002 s 111(4A) (added by the Finance Act 2003 s 126(5)).

8 Finance Act 2002 s 111(1), (2) (s 111(1) amended by the Finance Act 2003 s 126(2), (3)). These provisions apply if the relevant instrument is executed after 23 April 2002, but do not apply to an instrument giving effect to a contract made on or before 17 April 2002 unless (1) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right; or (2) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment or further contract made after that date: Finance Act 2002 s 111(8), (9). These provisions are deemed to have come into force on 24 April 2002: s 111(10).

If any duty payable under these provisions is not paid within the 30-day period, interest is payable on the unpaid amount, and the Stamp Act 1891 s 15A(3)-(5) (see PARA 1020) applies in relation to such interest: Finance Act 2002 Sch 34 para 5. See also PARA 1138.

9 'Acquisition relief' means relief under the Finance Act 1986 s 75 (see PARA 1091); and references to an acquisition in relation to which such relief applies are to an acquisition such that an instrument effecting the transfer of the shares is exempt from stamp duty by virtue of that provision: Finance Act 2002 Sch 34 para 4(2).

10 Ibid Sch 34 para 4(1). But if before the end of the period of two years beginning with the date on which the relevant instrument was executed (1) the transferee company ceases to be a member of the new group; and (2) at the time when the transferee company ceases to be a member of the new group it or a relevant associated company holds an estate or interest in land that was transferred to the transferee company by the relevant instrument or is derived from an estate or interest that was so transferred, and that has not subsequently been transferred at market value by a duly-stamped instrument on which ad valorem duty was paid and in respect of which duty was not claimed, these provisions apply as if the transferee had then ceased

to be a member of the same group as the transferor company and had then held the estate or interest in question: Sch 34 para 4(3) (amended by the Finance Act 2003 s 126(6), (7)). 'Relevant associated company', in relation to the transferee company, means a company that is in the same group as the transferee company immediately before the transferee company ceases to be member of the new group and which ceases to be a member of the new group in consequence of the transferee company's so ceasing: Finance Act 2002 Sch 34 para 4(4) (added by the Finance Act 2003 s 126(8)).

11 Ie every estate or interest in relation to which head (3) of the text applies.

12 Finance Act 2002 Sch 34 para 6(1), (2). Notification must be given within the period of 30 days within which the duty is payable: Sch 34 para 6(1). As to the Commissioners of Inland Revenue see INCOME TAXATION.

The Commissioners may by notice require any person to furnish them, within such time, not being less than 30 days, as may be specified in the notice, with such information (including documents or records) as the Commissioners may reasonably require for the purposes of these provisions; but a barrister or solicitor is not obliged, in pursuance of such a notice, to disclose, without his client's consent, any information with respect to which a claim to professional privilege could be maintained: Sch 34 para 10(1), (2).

13 The specified persons are: (1) the transferor company; (2) any company that, at any relevant time, was a member of the same group as the transferee company and was above it in the group structure; (3) any person who at any relevant time was a controlling director of the transferee company or of a company having control of the transferee company: ibid Sch 34 para 8(2). A 'relevant time' means any time between the execution of the relevant instrument and the transferee company ceasing to be a member of the same group as the transferor company; and a company is 'above' another company in a group structure if it is the parent (within the meaning of the relevant group relief provision see NOTE 4) of that company or of another company that is above that company in the group structure: Sch 34 para 8(3). 'Director', in relation to a company, has the meaning given by the Income and Corporation Taxes Act 1988 s 168(8) (read with s 168(9)) (see INCOME TAXATION) and includes any person falling within s 417(5) (read with s 417(6)) (see INCOME TAXATION); and 'controlling director', in relation to a company, means a director of the company who has control of it (construing 'control' in accordance with s 416 (see INCOME TAXATION): Finance Act 2002 Sch 34 para 8(4).

14 Ibid Sch 34 paras 8(1), 9(1). Such a notice must be served before the end of the period of three years beginning with the date on which the notice of determination mentioned in the text is issued, and must state the amount required to be paid by the person on whom it is served: Sch 34 para 9(2), (3). The notice has effect for the purposes of the recovery from that person of the amount required to be paid and of interest thereon, and for the purposes of appeals, as if it were a notice of determination and that amount were an amount of stamp duty reserve tax due from that person: Sch 34 para 9(4). A person who has paid an amount in pursuance of such a notice may recover that amount from the transferee company; but such a payment is not allowed as a deduction in computing any income, profits or losses for any tax purpose: Sch 34 para 9(5), (6).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

295 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a

partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

296 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

297 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals,

do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1082-1105 Exemptions from Stamp Duty

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1091. Exemption from ad valorem duty for the acquisition of a corporate undertaking on reconstruction.

**1091. Exemption from ad valorem duty for the acquisition of a corporate undertaking on reconstruction.**

Where a company ('the acquiring company') acquires the whole or part of an undertaking of another company ('the target company') in pursuance of a scheme for the reconstruction[1] of the target company, then, if the first and second conditions set out below are fulfilled, stamp duty under the heading 'Conveyance or Transfer on Sale[2] is not chargeable on an instrument[3] executed[4] for the purposes of, or in connection with, the transfer of the undertaking or part[5].

The first condition is that the registered office of the acquiring company is in the United Kingdom[6] and that the consideration for the acquisition:

92 (1) consists of or includes the issue of shares in the acquiring company to all the shareholders of the target company;
93 (2) includes nothing else (if anything) but the assumption or discharge by the acquiring company of liabilities of the target company[7].

The second condition is that:

94 (a) the acquisition is effected for bona fide commercial reasons and does not form part or a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to stamp duty, income tax, corporation tax or capital gains tax;
95 (b) after the acquisition has been made, each shareholder of each of the companies is a shareholder of the other; and
96 (c) after the acquisition has been made, the proportion of shares of one of the companies held by any shareholder is the same as the proportion of shares of the other company held by that shareholder[8].

An instrument on which stamp duty is not chargeable by virtue only of these provisions is not, however, to be taken to be duly stamped[9] unless it is stamped with the duty to which it would otherwise be liable or it has been stamped with a particular stamp[10] denoting that it is not chargeable with any duty[11].

1 For this purpose, 'reconstruction' requires that the business and the persons interested must be substantially the same: *Re South African Supply and Cold Storage Co, Wild v South African Supply and Cold Storage Co* [1904] 2 Ch 268; *Brooklands Selangor Holdings Ltd v IRC* [1970] 2 All ER 76, [1970] 1 WLR 429; *Baytrust Holdings Ltd v IRC* [1971] 3 All ER 76, [1971] 1 WLR 1333; *Swithland Investments Ltd v IRC* [1990] STC 448.

2 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

3 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1986 s 114(4)).

4 For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of ibid s 114(4)).

5 Ibid s 75(1), (2). Section 75 is deemed to have come into force on 25 March 1986 (s 75(7)); and applies to any instrument executed after 24 March 1986 unless executed in pursuance of an unconditional contract made on or before 18 March 1986 (s 75(6)).

6 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

7 Finance Act 1986 s 75(4).

8 Ibid s 75(5).

9 For the meaning of 'duly stamped' see PARA 1007 note 9 ante (definition applied by virtue of ibid s 114(4)).

10 Ie in accordance with the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

11 Finance Act 1986 s 75(3).

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

298 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

299 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the

relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

300 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1091 Exemption from ad valorem duty for the acquisition of a corporate undertaking on reconstruction**

NOTE 2--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9). This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

TEXT AND NOTE 6--Words 'that the registered office ... United Kingdom' omitted: Finance Act 1986 s 75(4) (amended by Finance Act 2006 s 169(2), Sch 26 Pt 7(5)).

TEXT AND NOTES 7, 9--If, immediately before the acquisition, the target company or the acquiring company holds any of its own shares, the shares must be treated for the purposes of the 1986 Act s 75(4), (5) as having been cancelled before the acquisition (and, accordingly, the company is treated as if it were not a shareholder in itself): s 75(5A) (added by Finance Act 2007 s 74(1)).

TEXT AND NOTE 7--The reference to 'shares' in head (1) is now to 'non-redeemable shares' (defined as shares which are not redeemable shares): 1986 Act s 75(4) (amended by Finance Act 2000 s 127(2), (3)).

TEXT AND NOTE 8--The holding is now required to be the same or as nearly as may be the same: 1986 Act s 75(5)(c) (amended by Finance Act 2006 s 169(2)).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1092. Reduction in the rate of ad valorem duty for the acquisition of a corporate undertaking.

**1092. Reduction in the rate of ad valorem duty for the acquisition of a corporate undertaking.**

Where a company ('the acquiring company') acquires the whole or part of an undertaking[1] of another company ('the target company'), then, if the condition set out below is fulfilled and stamp duty under the heading 'Conveyance or Transfer on Sale'[2] is chargeable on an instrument[3] executed[4] for the purposes of, or in connection with, (1) the transfer of the undertaking or part; or (2) the assignment to the acquiring company by a creditor of the target company of any relevant debts[5] (secured or unsecured) owed by the target company, the rate at which the duty is charged under that heading must not exceed 50 pence for every £100 or part of £100 of the amount or value of the consideration[6] for the sale to which the instrument gives effect[7]. The condition is that the registered office of the acquiring company is in the United Kingdom[8] and that the consideration for the acquisition:

97 (a) consists of or includes the issue of shares in the acquiring company to the target company or to all or any of its shareholders;

98 (b) includes nothing else (if anything) but cash not exceeding 10 per cent of the nominal value of those shares, or the assumption or discharge by the acquiring company of liabilities of the target company, or both[9].

An instrument on which, by virtue only of this provision, the rate at which stamp duty is charged is not to exceed that mentioned above is not, however, to be taken to be duly stamped[10] unless it is stamped with the duty to which it would otherwise be liable or it has been stamped with a particular stamp[11] denoting that it is duly stamped[12].

1 'Undertaking' denotes the business or enterprise of the company, not its assets: *Baytrust Holdings Ltd v IRC* [1971] 3 All ER 76, [1971] 1 WLR 1333.

2 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

3 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1986 s 114(4)).

4 For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of ibid s 114(4)).

5 'Relevant debts' means (1) any debt in the case of which the assignor is a bank or trade creditor; and (2) any other debt incurred not less than two years before the date on which the instrument is executed: ibid s 76(6).

6 Ie the rate of ad valorem duty applicable to the transfer of securities (see PARA 1029 ante) rather than the rate of £1 per £100 or part of £100 which applies (subject to a threshold for certified instruments: see PARA 1027 ante) to a conveyance or transfer on sale of other property (see PARA 1027 ante).

7 Finance Act 1986 s 76(1), (2), (4). Section 76 applies to any instrument executed on or after 27 October 1986 (ie the day on which the rule of the Stock Exchange that prohibited a person from carrying on business as both a broker and a jobber was abolished): s 76(7).

8 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

9 Finance Act 1986 s 76(3).

10 For the meaning of 'duly stamped' see PARA 1007 note 9 ante (definition applied by virtue of ibid s 114(4)).

11 Ie in accordance with the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

12 Finance Act 1986 s 76(5).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

301 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

302 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after

the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

303 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1082-1105 Exemptions from Stamp Duty

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

### 1092 Reduction in the rate of ad valorem duty for the acquisition of a corporate undertaking

TEXT AND NOTES--As to the exemption from ad valorem duty for a conveyance or transfer to a limited liability partnership, see PARA 1092A.

If the instrument transfers land in the United Kingdom, a second condition must be satisfied, ie that the acquiring company is not associated with another company that is party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part; and where an instrument transfers land in the United Kingdom together with other property, these provisions apply as if there were two separate instruments, one relating to land in the United Kingdom and the other relating to other property: Finance Act 1986 s 76(2), (3),

(3A), (3B), (5) (s 76(2) amended by the Finance Act 2002 s 112(2); 1986 Act s 76(3) amended by Finance Act 2002 s 112(3); 1986 Act s 76(3A), (3B) added by Finance Act 2002 s 112(4); 1986 Act s 76(5) amended by Finance Act 2002 s 112(5)). Companies are associated for this purpose if one has control of the other or both are controlled by the same person or persons; 'arrangements' includes any scheme, agreement or understanding, whether or not legally enforceable; and 'control' is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 416 (see INCOME TAXATION): Finance Act 1986 s 76(6A) (added by Finance Act 2002 s 112(6)). These provisions apply to instruments executed after 23 April 2002, but not to an instrument giving effect to a contract made on or before 17 April 2002 unless (1) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right; or (2) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment or further contract made after that date: s 112(7), (8). These provisions are deemed to have come into force on 24 April 2002: s 112(9).

TEXT AND NOTES 1-7--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9). The rate of duty is now expressed as a percentage: Sch 14 para 15. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

TEXT AND NOTE 8--Words 'that the registered office ... United Kingdom' omitted: Finance Act 1986 s 76(3) (amended by Finance Act 2006 s 169(3), Sch 26 Pt 7(5)).

The requirement that the company's registered office be in the United Kingdom is no longer considered to be good law, and Her Majesty's Revenue and Customs will accept claims for relief for companies with no such office, but based in the European Economic Area (provided that the other relevant requirements are met): HMRC Statement 22 July 2005.

TEXT AND NOTE 9--In head (a) reference to 'shares' now to 'non-redeemable shares' (defined as shares which are not redeemable shares): Finance Act 1986 s 76(3) (amended by Finance Act 2000 s 127(4)).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1092A. Exemption from ad valorem duty for conveyance or transfer to a limited liability partnership.

**1092A. Exemption from ad valorem duty for conveyance or transfer to a limited liability partnership.**

Stamp duty is not chargeable on an instrument[1] by which property is conveyed or transferred by a person to a limited liability partnership[2] in connection with its incorporation within the period of one year beginning with the date of incorporation if the following conditions are satisfied[3].

The first condition is that at the relevant time[4] the person (1) is a partner in a partnership comprised of all the persons who are or are to be members of the limited liability partnership, and no one else; or (2) holds the property conveyed or transferred as nominee or bare trustee[5] for one or more of the partners in such a partnership[6].

The second condition is that (a) the proportions of the property conveyed or transferred to which the persons mentioned in head (1) above are entitled immediately after the conveyance or transfer are the same as those to which they were entitled at the relevant time; or (b) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to any duty or tax[7].

1 For the meaning of 'instrument' see PARA 1001.

2 Limited liability partnership has the meaning given by the Limited Liability Partnerships Act 2000 s 1(2): s 18; see PARTNERSHIP vol 79 (2008) PARA 234.

3 Ibid s 12(1). Such an instrument will not be taken to be duly stamped unless it has, in accordance with the Stamp Act 1891 s 12, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped, or it is stamped with the duty to which it would be liable apart from s 12: Limited Liablity Partnerships Act 2000 s 12(6).

4 'Relevant time' means, if the person who conveyed or transferred the property to the limited liability partnership acquired the property after its incorporation, immediately after he acquired the property, and in any other case, immediately before its incorporation: ibid s 12(5).

5 For these purposes a person holds property as bare trustee for a partner if the partner has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to the property for payment of duty, taxes, costs or other outgoings, to direct how the property is dealt with: ibid s 12(4).

6 Ibid s 12(2).

7 Ibid s 12 (3).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s

125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

304 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

305 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

306 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely

on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105  Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1092B. Withdrawal of relief for company acquisitions.

**1092B. Withdrawal of relief for company acquisitions.**

Where:

99 (1) an instrument[1] (the relevant instrument) transferring land in the United Kingdom[2] from one company to another company ('the acquiring company') has been stamped on the basis that section 76 relief[3] applies;
100 (2) before the end of the period of three years beginning with the date on which the instrument was executed, control[4] of the acquiring company changes; and
101 (3) at the time of that change, the acquiring company, or a relevant associated company, holds an estate or interest in land that was transferred[5] to the acquiring company by the relevant instrument, or that is derived from an estate or interest so transferred, and that has not subsequently been transferred at market value by a duly stamped instrument on which ad valorem duty was paid and in respect of which section 76 relief was not claimed, then

15

17. (a) section 76 relief in relation to the relevant instrument, or an appropriate proportion[6] of it, is withdrawn; and
18. (b) the additional stamp duty that would have been payable on stamping the relevant instrument but for section 76 relief if the estate or interest in land transferred by that instrument had been transferred at market value, or an appropriate proportion of that additional duty, is payable by the acquiring company within 30 days after control of that company changes[7].

16

The provisions above do not apply by reason of control of the acquiring company changing as a result of a transfer of shares ('the exempt transfer') to another company ('the parent company') in relation to which share acquisition relief[8] applies[9].

The transferee must notify the Commissioners of Inland Revenue of:

102 (i) the date on which the event occurred by reason of which it is liable to make a payment of duty under these provisions;
103 (ii) the relevant land[10] held by it at that time;
104 (iii) the nature of the relevant instrument, the date on which it was executed, the parties to the instrument, and the date on which the instrument was stamped;
105 (iv) the market value of the land transferred to it by the relevant instrument at the date on which that instrument was executed; and
106 (v) the amount of duty and interest payable by it under these provisions[11].

Where an amount is payable under the above provisions by the transferee company, a notice of determination of the amount payable has been issued by the Inland Revenue, and the whole or part of that amount remains unpaid six months after the date on which it became payable, the Commissioners may serve a notice on any specified person[12] requiring him, within 30 days of the service of the notice, to pay the unpaid amount[13].

1 For the meaning of 'instrument' see PARA 1001 (definition applied by the Finance Act 2002 s 113(5), Sch 35 para 12).

2 For the meaning of 'United Kingdom' see PARA 1007 NOTE 6. Where the relevant instrument transfers land in the United Kingdom together with other property, the Finance Act 2002 s 113, Sch 34 apply as if there were two separate instruments, one relating to land in the United Kingdom, and the other relating to other property: s 113(6).

3 Ie relief under the Finance Act 1986 s 76: see PARA 1092.

4 'Control' is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 416 (see INCOME TAXATION); and references to control of a company changing are to the company becoming controlled (1) by a different person; (2) by a different number of persons; or (3) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled: Finance Act 2002 s 113(4)(b), (c).

These provisions do not apply by reason of control of the acquiring company changing as a result of (a) any of the transactions listed in the Stamp Duty (Exempt Instruments) Regulations 1987, SI 1987/516, Schedule (see PARA 1083); (b) a transfer of shares ('the intra-group transfer') in relation to which group relief applies; or (c) a loan creditor (within the meaning of the Income and Corporation Taxes Act 1988 s 417(7)-(9)) (see INCOME TAXATION) becoming, or ceasing to be, treated as having control of the company if the other persons who were previously treated as controlling the company continue to be so treated: Finance Act 2002 Sch 35 paras 2, 3(1), 5. 'Group relief' means relief under the Finance Act 1930 s 42 (as amended, see PARA 1090) or the Finance (Northern Ireland) Act 1954 s 11; and references to a transfer in relation to which group relief applies are to a transfer such that an instrument effecting the transfer is exempt from stamp duty by virtue of either of the group relief provisions: Finance Act 2002 Sch 35 para 3(2). However, if before the end of the period of two years beginning with the date on which the relevant instrument was executed (i) a company ('company B') holding shares in the acquiring company to which the intra-group share transfer related, or that are derived from such shares, ceases to be a member of the same group as the company referred to in the Finance Act 1986 s 76 as the target company ('company C'); and (ii) the acquiring company or a relevant associated company, at that time, holds an estate or interest in land that was transferred to the acquiring company by the relevant instrument, or that is derived from an estate or interest so transferred, and that has not subsequently been transferred at market value by a duly stamped instrument on which ad valorem duty was paid and in respect of which section 76 relief was not claimed, then section 76 relief in relation to the relevant instrument (or an appropriate proportion of that relief) is withdrawn, and the additional stamp duty that would have been paid on stamping the relevant instrument but for that relief if the land in question had been transferred by that instrument at market value, or an appropriate proportion of that amount, is payable by the acquiring company within 30 days after company B ceases to be a member of the same group as company C: Finance Act 2002 Sch 35 para 3(3), (4) (amended by the Finance Act 2003 s 127(6)). For this purpose, 'company' includes any body corporate, and references to a company being in the same group as another company are to the companies being associated bodies corporate within the meaning of the relevant group relief provision: Finance Act 2002 Sch 35 para 3(5).

5 References to the transfer of land include the grant or surrender of an estate or interest in or over land: ibid s 113(4)(a).

6 'An appropriate proportion' means an appropriate proportion having regard to what was transferred by the relevant instrument and what is held by that company or, as the case may be, by that company and any relevant associated companies at the time control of it changes: ibid s 113(3) (amended by the Finance Act 2003 s 127(4)). 'Relevant associated company', in relation to the acquiring company, means a company that is controlled by the acquiring company immediately before the control of that company changes, and of which control changes in consequence of the change of control of that company: Finance Act 2002 s 113(3A) (added by the Finance Act 2003 s 127(5)).

7 Finance Act 2002 s 113(1), (2) (amended by the Finance Act 2003 s 127(3)). These provisions apply if the relevant instrument is executed after 23 April 2002, but do not apply to an instrument giving effect to a contract made on or before 17 April 2002 unless (1) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right; or (2) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date: Finance Act 2002 113(7), (8). These provisions are deemed to have come into force on 24 April 2002: s 113(9).

If any duty payable under these provisions is not paid within the 30-day period, interest is payable on the unpaid amount, and the Stamp Act 1891 s 15A(3)-(5) (see PARA 1020) applies in relation to such interest: Finance Act 2002 Sch 35 para 6. See also PARA 1138.

8 'Share acquisition relief' means relief under the Finance Act 1986 s 77 (see PARA 1097), and references to a transfer in relation to which such relief applies are to a transfer such that an instrument effecting the transfer is exempt from stamp duty as a result of that provision: Finance Act 2002 Sch 35 para 4(2).

9 Ibid Sch 35 para 4(1). However, if before the end of the period of two years beginning with the date on which the relevant instrument was executed (1) control of the parent company changes at a time when that company holds any shares transferred to it by the exempt transfer, or any shares derived from shares so transferred; and (2) the acquiring company or a relevant associated company, at that time, holds an estate or interest in land that was transferred to the acquiring company by the relevant instrument, or that is derived from an estate or interest so transferred, and that has not subsequently been transferred at market value by a duly stamped instrument on which ad valorem duty was paid and in respect of which section 76 relief was not claimed, then (a) section 76 relief in relation to the relevant instrument (or an appropriate proportion of that relief) is withdrawn, and (b) the additional stamp duty that would have been paid on stamping the relevant instrument but for that relief if the land in question had been transferred by that instrument at market value, or an appropriate proportion of that amount, is payable by the acquiring company within 30 days after control of the parent company changed: Sch 35 para 4(3), (4) (amended by the Finance Act 2003 s 127(6)).

10 Ie every estate or interest in relation to which head (3) of the TEXT applies.

11 Finance Act 2002 Sch 35 para 7(1), (2). Notification must be given within the period of 30 days within which the duty is payable: Sch 35 para 7(1). As to the Commissioners of Inland Revenue see INCOME TAXATION.

The Commissioners may by notice require any person to furnish them, within such time, not being less than 30 days, as may be specified in the notice, with such information (including documents or records) as the Commissioners may reasonably require for the purposes of these provisions; but a barrister or solicitor is not obliged, in pursuance of such a notice, to disclose, without his client's consent, any information with respect to which a claim to professional privilege could be maintained: Sch 34 para 10(1), (2).

12 The specified persons are: (1) any company that, at any relevant time, was a member of the same group as the acquiring company and was above it in the group structure; and (2) any person who at any relevant time was a controlling director of the acquiring company or of a company having control of the acquiring company: ibid Sch 35 para 9(2). A 'relevant time' means any time between the execution of the relevant instrument and the change of control by virtue of which the liability to pay the amount arises: Sch 35 para 9(3). References to a company being in the same group are to one company having control of the other or both companies being under the control of the same person or persons; and a company is 'above' another company in a group structure if it controls that company or another company that is above that company in the group structure: Sch 35 para 9(4)(a), (b). 'Director', in relation to a company, has the meaning given by the Income and Corporation Taxes Act 1988 s 168(8) (read with s 168(9)) (see INCOME TAXATION) and includes any person falling within s 417(5) (read with s 417(6)) (see INCOME TAXATION); and 'controlling director', in relation to a company, means a director of the company who has control of it: Finance Act 2002 Sch 35 para 9(4)(c), (d).

13 Ibid Sch 35 paras 9(1), 10(1). Such a notice must be served before the end of the period of three years beginning with the date on which the notice of determination mentioned in the TEXT is issued, and must state the amount required to be paid by the person on whom it is served: Sch 35 para 10(2), (3). The notice has effect for the purposes of the recovery from that person of the amount required to be paid and of interest thereon, and for the purposes of appeals, as if it were a notice of determination and that amount were an amount of stamp duty reserve tax due from that person: Sch 35 para 10(4). A person who has paid an amount in pursuance of such a notice may recover that amount from the transferee company; but such a payment is not allowed as a deduction in computing any income, profits or losses for any tax purpose: Sch 34 para 10(5), (6).

## UPDATE

## 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

307 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

308 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

309 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1093. Exemption for conveyances to charities and certain institutions.**

Where any conveyance, transfer or lease[1] is made or agreed to be made[2] to a body of persons established for charitable purposes only[3] or to the trustees of a trust so established, or to the Trustees of the National Heritage Memorial Fund[4], no stamp duty is chargeable on the instrument[5] by which the conveyance, transfer or lease or the agreement for it is effected by virtue of the heads 'Conveyance or Transfer on Sale'[6], 'Conveyance or Transfer of any kind not hereinbefore described'[7] and 'Lease or Tack'[8].

However, no instrument not stamped with the duty to which it would be liable apart from this relief is to be deemed duly stamped[9] unless it has been stamped[10] with a stamp denoting that it is not chargeable with any duty[11].

By extra-statutory concession, when the reconstruction of a non-profit making body with objects in a field of public interest such as education, community work or scientific research, or the amalgamation of two or more such bodies involves a transfer to the successor body of assets for which there passes no consideration in money or money's worth, the instruments of transfer are treated as exempt from ad valorem stamp duty and charged to 50 pence fixed duty only[12].

1 As to the charge on premiums in leases of the same duty as on a conveyance on sale see PARA 1062 ante.

2 As to the charge on certain sale agreements of the same duty as on conveyances on sale see PARA 1040 ante.

3 For the purposes of the Finance Act 1982 s 129 (as amended: see note 8 infra) (exemption from stamp duty on grants, transfers to charities), the Historic Buildings and Monuments Commission for England is treated as a body of persons established for charitable purposes only: Finance Act 1983 s 46(3)(c) (amended by the Finance Act 1985 s 98(6), Sch 27 Pts IX, X; and by the Income and Corporation Taxes Act 1988 s 844(1), Sch 29 para 32). As to the meaning of 'established for charitable purposes only' see *Polish Combatants' Association Ltd v IRC* (1949) 28 ATC 217; and cf INCOME TAXATION vol 23(1) (Reissue) PARA 50. For the meaning of 'charitable purposes' see CHARITIES vol 8 (2010) PARA 1 et seq. See also the Education Reform Act 1988 s 230(4) (as amended); and PARA 1105 post.

4 As to the National Heritage Memorial Fund see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARAS 815-817.

5 This applies to instruments executed on or after 22 March 1982: Finance Act 1982 s 129(3).

6 Ie the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 et seq ante.

7 Ie ibid Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described': see PARA 1077 ante.

8 Finance Act 1982 s 129(1)(a) (amended by the Finance Act 1985 s 98(6), Sch 12 Pt IX). The head of charge referred to is the Stamp Act 1891 Sch 1, 'Lease or Tack' (as amended): see PARA 1058 ante. See also PARA 1054 note 1 ante.

9 As to the inadmissibility in evidence of instruments not duly stamped see ibid s 14(4); and PARA 1007 ante.

10 Ie in accordance with ibid s 12 (as amended): see PARA 1111 post.

11 Finance Act 1982 s 129(2).

12 Inland Revenue booklet IR 1 (1992) G6. There must be sufficient identity between the members of the transferor and transferee bodies and the rules of both must prohibit the distribution of assets to members and provide that on a winding up the assets can be transferred only to a similar body subject to like restrictions: Inland Revenue booklet IR 1 (1992) G6.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

310 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

311 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net

market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

312 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1093 Exemption for conveyances to charities and certain institutions**

TEXT AND NOTES 6-8--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pts I (paras 1-9), II (paras 10-15). The second head of charge is now simply 'Lease': Sch 14 para 7. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

NOTE 12--Inland Revenue booklet IR1 (1992) now IR1 (2000).

## 1094. Exemption for conveyance or lease to the Crown.

Where any conveyance, transfer or lease is made or agreed to be made to a minister of the Crown[1] or to the Treasury Solicitor[2], no stamp duty is chargeable by virtue of the headings 'Conveyance or Transfer on Sale'[3], 'Conveyance or Transfer of any kind not hereinbefore described'[4] or 'Lease or Tack'[5] on the instrument[6] by which the conveyance, transfer or lease, or the agreement for it, is effected[7].

The general exemption from all stamp duty for instruments by, to or with the Commissioners of Works[8] appears to be obsolete[9].

1 For these purposes, 'minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see s 8(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS: Finance Act 1987 s 55(2).

2 As to the Treasury Solicitor see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ie the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 et seq ante.

4 Ie ibid Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described': see PARA 1077 ante.

5 Ie ibid Sch 1, 'Lease or Tack' (as amended): see PARA 1058 ante. See also PARA 1054 note 1 ante.

6 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1987 s 72(4)).

7 Ibid s 55(1). In the absence of an express exemption, stamp duty is chargeable on an instrument relating to property belonging to the Crown or to the private property of the sovereign: see the Stamp Act 1891 s 119; and PARA 1001 ante.

8 Ie ibid Sch 1, 'General Exemptions from all Stamp Duties', PARA (6).

9 The functions and property of the Commissioners of Works under the Commissioners of Works Act 1852 were vested in the Minister of Works in 1945: see the Ministry of Works (Transfer of Powers) No 1) Order 1945, SR & O 1945/991; the Minister of Works (Change of Style and Title) Order 1962, SI 1962/1549. Although it seems that this exemption continued to apply to the minister when acting under the 1852 Act (ie when dealing with property for the civil service) prior to 1970 (see the Minister of Works Act 1942 s 5(5)), the functions of the minister and all property to which he was entitled, other than immovable property outside the United Kingdom, were transferred to the Secretary of State for the Environment in 1970: see the Secretary of State for the Environment Order 1970, SI 1970/1681. The Finance Act 1987 s 55(3) provides that the Secretary of State for the Environment Order 1970 art 3(6) (which exempted transfers by, to or with that minister) ceased to have effect on or after 1 August 1987. In the unlikely event that the Minister of Works held land outside the United Kingdom in succession to the Commissioners of Works and an instrument dealing with that land is caught by the Stamp Act 1891 s 14(4) (see PARA 1007 ante), Sch 1, 'General Exemptions from all Stamp Duties', PARA (6) (or the exemption in substantially the same terms in the Secretary of State for the Environment Order 1970 Sch 2) may still apply. Apart from this possibility, however, it would seem that relief is only available (assuming the instrument is otherwise chargeable) for a conveyance, transfer, or lease to the Crown under the Finance Act 1987 s 55 (see the text and notes 1-7 supra).

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not

apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

313 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

314 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$MV - SL$

315 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1094 Exemption for conveyance or lease to the Crown**

TEXT AND NOTES 1-7--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9). The second head is now simply 'Lease': Sch 14 paras 2, 22. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

The exemption is extended to transfers to the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government or the National Assembly for Wales Commission or to the Northern Ireland Assembly Commission: Finance Act 1987 s 55(1) (amended by Government of Wales Act 2006 Sch 10 para 20; and Finance Act 2000 s 132(1), (3)). References to a minister of the Crown are to be read as including the Scottish Ministers, the Lord Advocate and the Parliamentary corporation: Scotland Act 1998 s 123.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1095. Exemption for conveyances in connection with divorce etc.

**1095. Exemption for conveyances in connection with divorce etc.**

Conveyance on sale duty[1] is not chargeable on an instrument[2] by which property is conveyed or transferred from one party to a marriage to the other if the instrument:

107 (1) is executed[3] in pursuance of an order of a court made on granting in respect of the parties a decree of divorce, nullity of marriage or judicial separation[4]; or

108 (2) is executed in pursuance of an order of a court which is made in connection with the dissolution or annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such a decree[5]; or

109 (3) is executed at any time in pursuance of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or their judicial separation[6].

An instrument in respect of which conveyance on sale duty is not chargeable by virtue only of the above provisions is chargeable with stamp duty of 50 pence[7] and is exempt from all duty if certified in accordance with the relevant regulations[8].

1 Ie duty chargeable under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see para 1027 ante.

2 For the meaning of 'instrument' see para 1001 ante (definition applied by virtue of the Finance Act 1985 s 98(4)).

3 For the meaning of 'executed' see para 1007 note 5 ante (definition applied by virtue of ibid s 98(4)).

4 Ibid s 83(1)(a).

5 Ibid s 83(1)(b).

6 Ibid s 83(1)(c).

7 Ibid s 83(2). Section 83 applies to instruments executed on or after 26 March 1985 and is deemed to have come into operation on that date: s 83(3).

8 See the Stamp Duty (Exempt Instruments) Regulations 1987, SI 1987/516, reg 4, Schedule para H; and para 1083 note 7 head (2)(f) ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see para 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of

an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

316 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

317 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

318 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1082-1105 Exemptions from Stamp Duty

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

### 1095 Exemption for conveyances in connection with divorce etc

TEXT AND NOTES--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9). The duty is increased to £5: Sch 14 para 10. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2). Stamp duty under Sch 13 Pt 1 is not chargeable on an instrument by which property is conveyed or transferred from one party to a civil partnership to the other if the instrument is executed (1) in pursuance of an order of a court made on granting in respect of the parties an order or decree for the dissolution or annulment of the civil partnership or their judicial separation; (2) in pursuance of an order of a court which is made in connection with the dissolution or annulment of the civil partnership or the parties' judicial separation and which is made at any time after the granting of such an order or decree as is mentioned in head (1); (3) in pursuance of an order of a court which is made at any time under any provision of the Civil Partnership Act 2004 Sch 5 that corresponds to the Matrimonial Causes Act 1973 s 22A, 23A or 24A; or (4) at any time in pursuance of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution or annulment of the civil partnership, their judicial separation, or the making of a separation order in respect of them: Finance Act 1985 s 83(1A) (added by SI 2005/3229).

TEXT AND NOTE 7--Finance Act 1985 s 83(2) repealed: Finance Act 2008 Sch 32 para 2.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1096. Exception for short leases.

## 1096. Exception for short leases.

No stamp duty is payable on the grant of a lease for any definite term less than a year of any furnished dwelling house or apartments where the rent for such a term does not exceed £500[1]. If the rent for such a term exceeds £500, the duty payable is £1[2]. No stamp duty is payable on a lease by reference to the rent if the term does not exceed seven years or is indefinite and the rent is at a rate or average rate which does not exceed £500 per annum[3].

1 See the Stamp Act 1891 s 1, Sch 1, 'Lease or Tack' paras (2)(b), (3) (as amended); and PARA 1058 note 8 ante. See also PARA 1054 note 1 ante.

2 Ibid Sch 1, 'Lease or Tack' para (2)(a) (amended by the Finance Act 1974 s 49(1), Sch 11 para 10(2); Finance Act 1982 s 128(3)(a)).

3 See the Stamp Act 1891 Sch 1, 'Lease or Tack' para (3) (as amended); and PARA 1058 note 8 ante.

### UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

319 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

320 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in

a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

321 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105  Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1096 Exception for short leases**

TEXT AND NOTES--Repealed: Finance Act 1999 Sch 20 Pt V(2).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1096A. Exemption for instruments relating to intellectual property.

**1096A. Exemption for instruments relating to intellectual property.**

No stamp duty is chargeable on an instrument for the sale, transfer or other disposition of intellectual property[1]. Where stamp duty is chargeable[2] on an instrument and part of the property concerned consists of intellectual property (1) the consideration in respect of which duty would otherwise be charged must be apportioned, on such basis as is just and reasonable, as between the part of the property which consists of intellectual property and the part which does not; and (2) the instrument is chargeable only in respect of the consideration attributed to such of the property as is not intellectual property[3].

1 Finance Act 2000 s 129(1). 'Intellectual property' means (1) any patent, trade mark, registered design, copyright or design right; (2) any plant breeders' rights and rights under the Plant Varieties Act 1997 s 7 (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1175); (3) any licence or other right in respect of anything within head (1) or (2); and (4) any rights under the law of a country or territory outside the United Kingdom that correspond or are similar to those within head (1), (2) or (3): Finance Act 2000 s 129(1).

Intellectual property is disregarded for the purposes of the Finance Act 1999 Sch 13 para 6 (see PARA 1028), and any statement as mentioned in Sch 13 para 6(1) is to be construed as leaving out of account any matter so disregarded: Finance Act 2000 Sch 34 para 4. The Finance Act 1895 s 12 (see PARA 1050) does not require any person who is authorised to purchase any property as mentioned in s 12 to include any intellectual property in the instrument of conveyance required by s 12 to be produced to the Commissioners of Inland Revenue; and if the property consists wholly of intellectual property, no such instrument need be produced: Finance Act 2000 Sch 34 para 5.

2 Ie under the Finance Act 1999 Sch 13 Pt I (paras 1-9: see PARA 1027).

3 Finance Act 2000 Sch 34 paras 1, 2. Where part of the property referred to in the Stamp Act 1891 s 58(1) (see PARA 1036) or (2) (see PARA 1037) consists of intellectual property (and in the latter case that both, or, as the case may be, all the relevant persons are connected with one another), the consideration is to be apportioned as is just and reasonable (and not as the parties think fit), and stamp duty is chargeable, and the enactments relating to stamp duty have effect, accordingly: Finance Act 2000 Sch 34 para 3(1)-(3), (5). A person is a 'relevant person' if he is a person by or for whom the property is contracted to be purchased: Sch 34 para 3(4)(a). The question whether persons are connected with one another is to be determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258): Finance Act 2000 Sch 34 para 3(4)(b).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

322 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

323 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

324 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership

property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iii) Exemptions relating to Conveyances, Leases etc/1096B. Transfers to registered social landlords etc.

**1096B. Transfers to registered social landlords etc.**

No stamp duty is chargeable[1] on a conveyance or transfer of an estate or interest in land, or on a lease of land (1) to a qualifying landlord[2] controlled by its tenants[3]; (2) to a qualifying landlord by a qualifying transferor[4]; or (3) to a qualifying landlord purchasing the estate or interest, or the grant of the lease, with the assistance of a public subsidy[5]. Where stamp duty would be chargeable on any instrument but for head (3) above, the qualifying landlord concerned must certify to the Board that the instrument is one within that head[6].

An instrument on which stamp duty is not chargeable by virtue only of these provisions is not duly stamped unless it is stamped with the duty to which it would otherwise be liable, or it has been stamped[7] with a particular stamp denoting that it is not chargeable with any duty[8].

1 Ie under the Finance Act 1999 Sch 13 Pt I, II or Pt III para 16.

2 A 'qualifying landlord' is, in relation to England and Wales, any body registered as a social landlord maintained under the Housing Act 1996 s 1(1) (see HOUSING vol 22 (2006 Reissue) PARA 67): Finance Act 2000 s 130(5)(a).

3 A qualifying landlord is controlled by its tenants where the majority of the board members of the qualifying landlord are tenants occupying properties owned or managed by the qualifying landlord (ibid s 130(2)); and for this purpose, a 'board member' means (1) in relation to a qualifying landlord which is a company (as defined in the Companies Act 2006 s 1) (see COMPANIES vol 14 (2009) PARA 24), a director of the company; (2) in relation to a qualifying landlord which is a body corporate whose affairs are managed by its member, a member; (3) in relation to a qualifying landlord which is a body of trustees, a member of that body of trustees; and (4) in relation to any other qualifying landlord, a member of the committee of management or other body to which is entrusted the direction of the affairs of the qualifying landlord: Finance Act 2000 s 130(3), (4) (amended by SI. 2009/1890).

4 A 'qualifying transferor' is (1) a qualifying landlord, (2) a housing action trust established under the Housing Act 1988 Pt III (ss 60-92); (3) a principal council (within the meaning of the Local Government Act 1972); (4) the Common Council of the City of London; (5) a council constituted under the Local Government etc (Scotland) Act 1994; (6) Scottish Homes; (7) the Department for Social Development in Northern Ireland; or (8) the Northern Ireland Housing Executive: Finance Act 2000 s 130(6).

5 Ibid s 130(1). 'Public subsidy' means any grant or other financial assistance (1) made or given by way of a distribution pursuant to the National Lottery etc Act 1993 s 25; (2) under the Housing Act 1996 s 18; (3) under the Housing Grants, Construction and Regeneration Act 1996 s 126; (4) under the Housing (Scotland) Act 1988 s 2; or (5) under the Housing (Northern Ireland) Order 1992, SI 1992/1725 (NI 15), art 33: Finance Act 2000 s 130(7).

6 Ibid s 130(8).

7 Ie in accordance with the Stamp Act 1891 s 12: see PARA 1111.

8 Finance Act 2000 s 130(9). For transitional provisions see s 131.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125

(amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

325 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

326 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

327 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iv) Exemptions relating to Bearer Instruments and Securities/1097. Exemption from ad valorem duty for the acquisition of a company's share capital.

## (iv) Exemptions relating to Bearer Instruments and Securities

### 1097. Exemption from ad valorem duty for the acquisition of a company's share capital.

Stamp duty under the heading 'Conveyance or Transfer on Sale'[1] is not chargeable on an instrument[2] transferring shares[3] in one company ('the target company') to another company ('the acquiring company') if the following conditions are fulfilled[4]. Those conditions are that:

110 (1) the registered office of the acquiring company is in the United Kingdom[5];
111 (2) the transfer forms part of an arrangement by which the acquiring company acquires the whole of the issued share capital of the target company;
112 (3) the acquisition is effected for bona fide commercial reasons and does not form part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to stamp duty, stamp duty reserve tax[6], income tax, corporation tax or capital gains tax;
113 (4) the consideration for the acquisition consists only of the issue of shares in the acquiring company to the shareholders of the target company;
114 (5) after the acquisition has been made, each person who immediately before it was made was a shareholder of the target company is a shareholder of the acquiring company;
115 (6) after the acquisition has been made, the shares in the acquiring company are of the same classes as were the shares in the target company immediately before the acquisition was made;
116 (7) after the acquisition has been made, the number of shares of any particulars class in the acquiring company bears to all the shares in that company the same proportion as the number of shares of that class in the target company bore to all the shares in that company immediately before the acquisition was made; and
117 (8) after the acquisition has been made, the proportion of shares of any particular class in the acquiring company held by any particular shareholder is the same as the proportion of shares of that class in the target company held by him immediately before the acquisition was made[7].

An instrument on which stamp duty is not chargeable by virtue only of these provisions is not, however, to be taken to be duly stamped[8] unless it is stamped with the duty to which it would otherwise be liable or it has been stamped with a particular stamp[9] denoting that it is not chargeable with any duty[10].

1 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

2 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1986 s 114(4)).

3 For these purposes, references to shares and to share capital include references to stock: ibid s 77(4).

4 Ibid s 77(1). Section 77 applies to any instrument executed on or after 1 August 1986: s 77(5). For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of s 114(4)).

5 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

6 As to stamp duty reserve tax see PARA 1118 et seq post; and as to its prospective abolition see PARA 1119 post.

7 Finance Act 1986 s 77(3).

8 For the meaning of 'duly stamped' see PARA 1007 note 9 ante (definition applied by virtue of ibid s 114(4)).

9 Ie in accordance with the Stamp Act 1891 s 12 (as amended): see PARA 1111 post.

10 Finance Act 1986 s 77(2). Section 77 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

328 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

329 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15

para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

330 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1097 Exemption from ad valorem duty for the acquisition of a company's share capital**

NOTE 1--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9). This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

TEXT AND NOTES 5-7--If, immediately before the acquisition, the target company or the acquiring company holds any of its own shares, the shares must be treated for the purposes of the Finance Act 1986 s 77(3) as having been cancelled before the acquisition (and, accordingly, the company is treated as if it were not a shareholder in itself): s 77(3A) (added by Finance Act 2007 s 74(2)).

TEXT AND NOTE 5--Head (1) omitted: 1986 Act s 77(3) (amended by Finance Act 2006 s 169(4), Sch 26 Pt 7(5)).

TEXT AND NOTE 7--In heads (7) and (8) for 'the same' read 'the same or as nearly as may be the same': 1986 Act s 77(3)(g), (h) (amended by Finance Act 2006 s 169(4)).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iv) Exemptions relating to Bearer Instruments and Securities/1098. Exemptions for bearer instruments; in general.

**1098. Exemptions for bearer instruments; in general.**

Certain classes of instrument are exempt from the stamp duty on bearer instruments[1]. These are:

118 (1) an instrument[2] constituting or used for transferring[3] stock[4] which is exempt[5] from all stamp duties on transfer[6];
119 (2) an instrument which relates to an interest in, a right to allotment of or to subscribe for, or an option to acquire or to dispose of, exempt securities[7];
120 (3) a renounceable letter of allotment, letter of rights or other similar instrument where the rights under it are renounceable not later than six months after its issue[8];
121 (4) an instrument relating to stock[9] expressed in foreign currency[10] or the transfer of stock constituted by or transferable by means of any such instrument[11];
122 (5) an instrument issued by the OECD Support Fund[12] or the Inter-American Development Bank[13] or the transfer of the stock constituted by or transferable by means of any such instrument[14];
123 (6) an instrument issued by the Asian Development Bank, the African Development Bank or the European Bank for Reconstruction and Development, or on the transfer of the stock constituted by or transferable by means of any such instrument[15];
124 (7) an instrument which relates to loan capital, or on the transfer of the loan capital constituted by or transferable by means of, any such instrument[16]; and
125 (8) an instrument which relates to paired shares dealt with as units[17].

1 As to the duty on bearer instruments see PARA 1066 et seq ante; and as to its prospective abolition see PARA 1004 ante.

2 For the meaning of 'instrument' see PARA 1001 ante.

3 For the meaning of 'transferring' see PARA 1066 note 4 ante.

4 As to the meaning of 'stock' see PARA 1066 note 9 ante.

5 As to exempt stock see PARA 1100 post.

6 Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument', Exemption 1 (added by the Finance Act 1963 s 59(1)). The Stamp Act 1891 Sch 1, 'Bearer Instrument' (as so added) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

7 Finance Act 1987 s 50(1), (2) (s 50(1) amended by the Finance (No 2) Act 1987 s 99). For the meaning of 'exempt securities' see PARA 1100 note 6 post. The Finance Act 1987 s 50 and the Finance (No 2) Act 1987 s 99 are prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

8 Stamp Act 1891 Sch 1, 'Bearer Instrument', Exemption 3 (added by the Finance Act 1963 s 59(1)). As to the prospective repeal of this head of charge, and the exemptions to it, see note 6 supra. Any instrument which is exempt from duty under the Stamp Act 1891 Sch 1, 'Bearer Instrument' (as added and amended) by virtue of this exemption or would be so exempt if it were otherwise chargeable under that head is also exempt from duty under or by reference to Sch 1, 'Conveyance or Transfer on Sale' (as amended) (see PARA 1027 ante): Finance Act 1963 s 65(1). Section 65(1) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

Where, however, there is an arrangement whereby (1) rights under an instrument are renounced in favour of a person ('A'); (2) the rights are rights to shares in a company ('company B'); and A, or a person connected with A, or A and such a person together, has or have control of company B or will have such control in consequence of the arrangement, the instrument is not exempt by virtue of the Finance Act 1963 s 65(1) or the corresponding Northern Ireland legislation from stamp duty under or by reference to the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended): Finance Act 1985 s 81(1), (2). Section 81 applies to instruments if rights are renounced under themon or after 1 August 1985, except where the arrangement concerned includes an offer for the rights and on or before 27 June 1985 the offer became unconditional as to acceptances: s 81(7). For these purposes, (a) 'shares' includes stock (s 81(4)); (b) a person has control of company B if he has power to control company B's affairs by virtue of holding shares in, or possessing voting power in relation to, company B or any other body corporate (s 81(5)); (c) references to shares in company B include references to its loan capital to which the Finance Act 1976 s 126(1) (repealed) does not apply by virtue of s 126(2) or (3) (convertible loan capital and excessive return capital) (repealed; but that repeal is to be ignored for these purposes by virtue of the Finance Act 1986 ss 78(10), 79(12)) (Finance Act 1985 s 81(3)); and (d) one person is connected with another if he would be so connected for the purposes of the Taxation of Chargeable Gains Act 1992 (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 43 (Finance Act 1985 s 81(6) (amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 9)). As to the stamp duty reserve tax charge in respect of agreements to transfer rights constituted by renounceable instruments see PARAS 1118, 1121 post. The Finance Act 1985 s 81 (as so amended) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

9 'Stock', except in the expression 'capital stock' (see note 11 infra), is to be construed in accordance with the Finance Act 1963 s 59(4) (see PARA 1029 note 4 ante): Finance Act 1967 s 30(5).

10 Ie stock expressed in any currency other than sterling or in units of account defined by reference to more than one currency, whether or not including sterling: ibid s 30(1) (amended by the Finance Act 1987 s 51(1), (2)).

11 Finance Act 1967 s 30(1) (as amended: see note 10 supra). Where the stock to which any instrument relates consists of a loan for the replacement of which there is an option between sterling and one or more other currencies, s 30(1) (as so amended) applies if the option is exercisable only by the holder of the stock and does not apply in any other case: s 30(2) (amended by the Finance Act 1987 s 51(1), (3)). Where the capital stock of any company or body of persons is not expressed in the terms of any currency, it is treated for these purposes as expressed in the currency of the territory under whose law the company or body is formed or established, and a unit under a unit trust scheme or a share in a foreign mutual fund is treated as capital stock of a company or body formed or established in the territory by whose law the scheme or fund is governed: Finance Act 1967 s 30(3). For these purposes, 'foreign mutual fund' means a fund administered under arrangements governed by the law of a territory outside the United Kingdom whereby subscribers to the fund are entitled to participate in, or receive payments by reference to, profits or income arising to the fund from the acquisition, holding, management or disposal of investments; and 'share' in relation to a foreign mutual fund means the right of a subscriber, or of another in his right, to participate in, or receive payments by reference to, profits or income so arising: s 30(5). 'Unit trust scheme' and 'unit' in relation to a unit trust scheme have the meanings given to them by the Finance Act 1946 s 57 (as amended) (see PARA 1029 note 4 ante): Finance Act 1967 s 30(5). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante. Section 30 (as amended) does not apply in relation to certain paired shares (see the Finance Act 1988 s 143(4)(b); and PARA 1099 post) and is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

12 As to this fund see the Agreement establishing a Financial Support Fund of the Organisation for Economic Co-operation and Development (Paris, 9 April to 31 May 1975; Misc 20 (1975); Cmnd 6242).

13 As to the establishment and admission rules of the bank see the Agreement establishing the Inter-American Development Bank (Washington, 8 April 1959; TS 12 (1980); Cmnd 7792).

14 OECD Support Fund Act 1975 s 4(2); Finance Act 1976 s 131(3) (which took effect on the admission of the United Kingdom as a member of the Inter-American Development Bank on 9 July 1976: see s 131(1)). Section 131(3), and the OECD Support Fund Act 1975 s 4(2), are prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

15 The organisations referred to in head (6) in the text are designated organisations for the purposes of the Finance Act 1984 s 126 (as amended): see the International Organisations (Tax Exempt Securities) Order 1984, SI 1984/1215; the International Organisations (Tax Exempt Securities) (No 2) Order 1984, SI 1984/1634; and the International Organisations (Tax Exempt Securities) Order 1991, SI 1991/1202. No stamp duty is chargeable under the Stamp Act 1891 Sch 1, 'Bearer Instrument' (as added and amended) on the issue of any instrument by such an organisation or on the transfer of the stock constituted by, or transferable by means of, any instrument issued by the organisation: Finance Act 1984 s 126(3)(c). Section 126(3)(c) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day. As to the exemption under the Finance Act 1984 s 126 (as amended) relating to certain EC institutions see PARA 1100 post.

16 See PARA 1101 post.

17 See PARA 1099 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

331 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

332 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the

transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

333 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1098 Exemptions for bearer instruments; in general**

TEXT AND NOTES--Stamp duty is not charged on a bearer instrument issued outside the United Kingdom in respect of a loan which is expressed in a currency other than sterling and which is not offered for subscription in the United Kingdom or offered for subscription with a view to an offer for sale in the United Kingdom of securities in respect of the loan: Finance Act 1999 Sch 15 para 13. No duty is chargeable on any description of instrument in respect of which duty was abolished by the Finance Act 1971 s 64 (abolition of duty on mortgages, bonds debentures etc) or the Finance Act 1989 s 173 (insurance policies and superannuation annuities): Finance Act 1999 Sch 15 para 15. For the prospective repeal of Sch 15 from abolition day, see s 123(3); and PARAS 1004, 1005.

Stamp duty is not chargeable on a substitute instrument, ie a bearer instrument given in substitution for a like instrument stamped ad valorem (whether under the Finance Act 1999 Sch 15 or otherwise) (the 'original instrument'); but the substitute instrument

is not treated as duly stamped unless it appears by some stamp impressed on it that the full and proper duty has been paid on the original instrument: Sch 15 para 12A (added by Finance Act 2008 Sch 32 para 11(3)).

TEXT AND NOTE 6--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9): Sch 14 para 21.

TEXT AND NOTE 7--For the exemption in head (2), see now Finance Act 1999 Sch 15 para 14. For the prospective repeal of Sch 14 para 21 from abolition day, see s 123(3).

TEXT AND NOTE 8--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 para 24(d): Sch 14 para 8. For the exemption in head (3), see now Sch 15 para 16. For the prospective repeal of these provisions from abolition day, see s 123(3).

TEXT AND NOTES 9-11--For the exemption in head (4), see now Finance Act 1999 Sch 15 paras 17-19.

TEXT AND NOTES 12-14--References in Finance Act 1976 s 131(3) amended: Finance Act 1999 Sch 16 para 3. For the prospective repeal of Sch 16 para 3 from abolition day, see s 123(3).

TEXT AND NOTE 15--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 15 (bearer instruments): Sch 16 para 4. For the prospective repeal of Sch 16 para 4 from abolition day, see s 123(3).

**1099. Exemption for paired shares.**

The following provisions apply where:

126 (1) the articles of association of a company incorporated in the United Kingdom[1] ('the UK company') and the equivalent instruments governing a company which is not so incorporated ('the foreign company') each provide that no share in the company to which they relate may be transferred otherwise than as part of a unit comprising one share in that company and one share in the other; and

127 (2) such units are to be or have been offered for sale to the public in the United Kingdom and, at the same time, other[2] such units are to be or, as the case may be, have been offered for sale to the public at a broadly equivalent price in the country in which the foreign company is incorporated ('the foreign country')[3].

In relation to any bearer instrument issued on or after 1 November 1987 which represents shares in the UK company, or a right to an allotment of or to subscribe for such shares, if the purpose of the issue is:

128 (a) to make such shares available for sale as part of such units as are referred to above, in pursuance of either of the offers referred to in head (2) above or of any other offer for sale of such units to the public made at the same time and at a broadly equivalent price in a country other than the United Kingdom or the foreign country; or

129 (b) to give effect to an allotment of such shares, as part of such units, as fully or partly paid bonus shares[4],

then any duty chargeable on issue under the heading 'Bearer Instrument'[5] which would otherwise be payable[6] is not so payable[7].

In relation, however, to any bearer instrument issued on or after 9 December 1987 which represents shares in the foreign company, or a right to an allotment of or to subscribe for such shares, and which is not issued for the purpose:

130 (i) of making shares in the foreign company available for sale, as part of such units as are referred to above, in pursuance of either of the offers referred to in head (2) above or of any other offer such as is mentioned in head (a) above; or

131 (ii) of giving effect to an allotment of such shares, as part of such units, as fully or partly paid up bonus shares[8],

then the foreign company is treated[9] as a company formed or established in Great Britain[10] and the exemption for bearer instruments relating to stock in foreign currencies[11] does not apply[12].

The statutory requirement[13] that every instrument written upon the same piece of material as another instrument must be separately stamped does not apply in relation to any bearer instrument issued on or after 9 December 1987 which represents shares in the UK company or the foreign company, or a right to an allotment of or to subscribe for such shares[14].

1 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante (definition applied by virtue of the Finance Act 1988 s 143(8)). In relation to any instrument which transfers such units as are referred to in heads (1)-(2) in the text and is executed on or after 29 July 1988, the foreign company (see head (1) in the text) is treated for the purposes of the Finance Act 1986 ss 67, 68 (depositary receipts: see PARAS 1070-1071 ante) and ss 70, 71 (clearance services: see PARAS 1072-1073 ante) as a company incorporated in the United Kingdom: Finance Act 1988 s 143(6). For the meaning of 'instrument' see PARA 1001 ante; and for the meaning of 'executed' see PARA 1007 note 5 ante (definitions applied by virtue of s 143(8)).

2 The word 'other' is substituted for the words 'an equal number of' (in this provision as originally enacted) by the Finance Act 1990 s 112(1). Section 112(1) applies where (1) the offers referred to in the Finance Act 1988 s 143(1) (as so amended) are made, or are to be made, on or after 26 July 1990; and (2) before the offers are made, or are to be made, units comprising shares in the two companies concerned were offered, whether before or on or after that date, in circumstances where s 143 applied without that amendment: Finance Act 1990 s 112(2).

3 Finance Act 1988 s 143(1) (as amended: see note 2 supra). Section 143 (as so amended) and s 144 (stamp duty reserve tax: see PARA 1124 post) are intended to give effect to the measures announced in a Revenue Press Release (5 November 1987) relating to the sale of units in Eurotunnel plc and Eurotunnel SA. The arrangements reflect the Equity 3 Offer by Eurotunnel but would apply if the same arrangements were adopted in other cases: Revenue Press Release supra.

4 Finance Act 1988 s 143(3). Section 143(2) (see the text to notes 5-7 infra), s 143(3) and s 143(1) (so far as relating to s 143(2), (3)) is deemed to have come into force on 1 November 1987: s 143(9).

5 Ie under the Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' (as added and amended): see PARA 1065 et seq ante. As to the prospective abolition of this head of charge see PARA 1004 ante.

6 Ie by virtue of the Finance Act 1963 s 60 (see PARA 1068 ante) or the corresponding Northern Ireland legislation.

7 Finance Act 1988 s 143(2). See also note 4 supra.

8 Ibid s 143(5). Section 143(5), s 143(4) (see the text to notes 9-12 infra) and s 143(7) (see the text to notes 13-14 infra), together with s 143(1) so far as relating to s 143(4), (5) or (7), is deemed to have come into force on 9 December 1987: s 143(9).

9 Ie for the purposes of the Finance Act 1963 s 59 (as amended) (see PARAS 1066-1067 ante) and s 60 (see PARA 1068 ante).

10 Finance Act 1988 s 143(4)(a)(i). For the corresponding provisions relating to Northern Ireland see s 143(4)(a)(ii). For the meaning of 'Great Britain' see PARA 1007 note 6 ante. See also note 8 supra.

11 Ie the Finance Act 1967 s 30 (as amended): see PARA 1098 ante.

12 Finance Act 1988 s 143(4)(b). See also note 8 supra.

13 Ie the Stamp Act 1891 s 3: see PARA 1014 ante.

14 Finance Act 1988 s 143(7). See also note 8 supra. Section 143 (as amended) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of

an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

334 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

335 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

336 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105  Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1099  Exemption for paired shares**

TEXT AND NOTES 4-7--The reference is now to duty chargeable under the Finance Act 1999 Sch 15 para 1, but the exemption is without prejudice to the other requirements of Sch 15: Finance Act 1988 s 143(2) (substituted by Finance Act 1999 Sch 16 para 11). For the prospective repeal of Sch 15 from abolition day, see s 123(3); and PARAS 1004, 1005.

TEXT AND NOTES 8-12--The foreign company is now treated for the purposes of the Finance Act 1999 Sch 15 as a UK company, and Sch 15 para 17 (see PARA 1098) does not apply: Finance Act 1988 s 143(4) (amended by Finance Act 1999 Sch 16 para 11). For the prospective repeal of these provisions from abolition day, see s 123(3).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iv) Exemptions relating to Bearer Instruments and Securities/1100. Exemption for government stock etc and the stock of certain European and international institutions.

**1100. Exemption for government stock etc and the stock of certain European and international institutions.**

No stamp duty is chargeable on transfers of shares in government or Parliamentary stocks or funds[1] or on transfers of certain stock[2] where payment of principal and interest is guaranteed by the Treasury[3]. Similarly, no stamp duty is chargeable on the issue of any instrument[4] by the European Community[5] or the European Investment Bank, or on the transfer of the stock constituted by, or transferable by means of, any such instrument[6].

Where an interest in, a right to an allotment of or to subscribe for, or an option to acquire or to dispose of, exempt securities[7] is transferred to or vested in any person by any instrument, no stamp duty is chargeable on the instrument by virtue of either of the headings 'Conveyance or Transfer on Sale'[8] and 'Conveyance or Transfer of any kind not hereinbefore described'[9]; and no stamp duty under the heading 'Bearer Instrument'[10] is chargeable on the issue of an instrument which relates to such an interest, right or option, or on the transfer of the interest, right or option constituted by, or transferable by means of, such an instrument[11].

Transfers of any stock of the International Bank for Reconstruction and Development are exempt from all stamp duties[12].

1 Stamp Act 1891 s 1, Sch 1, 'General Exemptions from all Stamp Duties' para (1). It seems that transfers of equitable interests in government stocks are within the exemption. Bearer instruments constituting or used for transferring stock which is exempt from all stamp duties on transfer by virtue of this exemption or of any other enactment are also exempt by virtue of Sch 1, 'Bearer Instrument', Exemption 1 (as added): see PARA 1098 ante. As to exemptions relating to national savings etc see PARA 1087 ante; and as to Treasury-guaranteed stock of bodies constituted for the purposes of nationalisation schemes see PARA 1086 ante. As to the prospective abolition of bearer instrument duty see PARA 1004 ante. Schedule 1, 'General Exemptions from all Stamp Duties' para (1) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

2 Ie stock to which this provision may be applied by Treasury direction, being stock issued by a body corporate constituted to carry on an industry or undertaking under national ownership or control: Finance Act 1947 s 57(2) (amended by the Air Corporations Act 1949 s 41, Sch 3; the Electricity Act 1989 s 112(4), Sch 18). Directions have been given in respect of certain pre-privatisation electricity and gas guaranteed stock. As to the privatisation of the electricity industry see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1034 et seq; and as to the privatisation of the gas industry see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 777.

3 Finance Act 1947 s 57(1). Section 57 (as amended) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

4 For the meaning of 'instrument' cf the Stamp Act 1891 s 122; and see PARA 1001 ante.

5 Ie including the European Coal and Steel Community and the European Atomic Energy Community: see the European Communities (Tax Exempt Securities) Order 1985, SI 1985/1172.

6 See the Finance Act 1984 s 126(3)(c) (modified for these purposes by s 126(5) (added by the Finance Act 1985 s 96(1)). The Finance Act 1984 s 126(3)(c), (5) (as so modified and added) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day. The Treasury may, by order made by statutory instrument, designate any of the European Communities or the European Investment Bank for these purposes, and references in the Finance Act 1984 s 126(2), (3) (as amended) (see PARA 1098 ante) to a designated organisation include references to a body so designated: s 126(4) (added by the Finance Act 1985 s 96(1)). In exercise of the power so conferred, the Treasury has made the European Communities (Tax Exempt Securities)

Order 1985, SI 1985/1172, designating the EC institutions referred to in the text and note 5 supra and the European Investment Bank.

7 For these purposes, 'exempt securities' means securities (1) the transfer of which is exempt from all stamp duties; (2) constituted by or transferable by means of an instrument the issue of which is, by virtue of the Finance Act 1967 s 30 (as amended) (see PARA 1090 ante), the Finance Act 1986 s 79(2) (see PARA 1101 post) or the corresponding Northern Ireland legislation, exempt from stamp duty under the Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' (as added, amended and prospectively repealed) (see PARA 1065 et seq ante); or (3) the transfer of which is, by virtue of the statutory provisions mentioned in head (2) supra, exempt from stamp duty under that heading; and 'securities' means stock or marketable securities and includes loan capital as defined in the Finance Act 1986 s 78(7) (see PARA 1101 note 3 post): Finance Act 1987 s 50(3) (amended by the Finance (No 2) Act 1987 s 99(2)). For the meaning of 'stock' and 'marketable securities' see PARA 1029 notes 4-5 ante (definitions applied by virtue of the Finance Act 1987 s 72(4)).

8 Ie the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 ante.

9 Ie ibid Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described': see PARA 1077 ante.

10 Ie ibid Sch 1, 'Bearer Instrument' (as added, amended and prospectively repealed): see PARA 1065 et seq ante.

11 Finance Act 1987 s 50(1), (2) (s 50(1) amended by the Finance (No 2) Act 1987 s 99(1)). The Finance Act 1987 s 50(1) (as so amended) applies to any instrument executed on or after 1 August 1987 (s 50(4)); and s 50(2) applies (1) to any instrument which falls within the Finance Act 1963 s 60(1) (see PARA 1068 ante) and is issued on or after 1 August 1987 (Finance Act 1987 s 50(5)(a)); and (2) to any instrument which falls within the Finance Act 1963 s 60(2) (see PARA 1068 ante) if the interest, right or option constituted by or transferable by means of it is transferred on or after 1 August 1987 (Finance Act 1987 s 50(5)(b)). Section 50 (as amended) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

12 Finance Act 1951 s 42(1). Section 42(1) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

337 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual

consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

338 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

339 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1100 Exemption for government stock etc and the stock of certain European and international institutions**

TEXT AND NOTES--These provisions (as amended: see infra) do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): Finance Act 1999 s 122, Sch 20 Pt V(2).

TEXT AND NOTE 1--Replaced. The exemption also extends to any strip (within the meaning of the Finance Act 1942 s 47) of such stock or funds: Finance Act 1999 Sch 13 para 24(a). For the prospective repeal of Sch 13 para 24(a) from abolition day, see s 123(3); and PARAS 1004, 1005.

NOTE 6--Finance Act 1984 s 126(3)(c), (5) further modified: Finance Act 1999 Sch 16 para 4.

NOTE 7--Head (2) now covers securities constituted by or transferable by means of an instrument the issue of which is exempt from stamp duty under the Finance Act 1999 Sch 15 para 1 (see PARA 1065) by virtue of Sch 15 para 17 (see PARA 1098); and head (3) refers to securities the transfer of which is exempt by virtue of Sch 15 para 17 or the Finance Act 1986 s 79(2) (see PARA 1101): Finance Act 1987 s 50(3)(b), (c) (amended by Finance Act 1999 Sch 16 para 10). For the prospective repeal of these provisions from abolition day, see s 123(3).

NOTES 8-10--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9) (conveyance or transfer on sale) and Sch 15 (bearer instruments).

NOTE 11--Finance Act 1987 s 50(4), (5) repealed, except in relation to instruments relating to units under unit trusts: Finance Act 1999 Sch 20 Pt V(2).

**1101. Exemption for certain categories of loan capital.**

Stamp duty under the heading 'Bearer Instrument'[1] is not chargeable on the issue of an instrument[2] which relates to loan capital[3] or on the transfer of the loan capital constituted by, or transferable by means of, such an instrument[4].

Stamp duty is not chargeable on an instrument which transfers loan capital issued or raised by (1) the financial support fund of the Organisation for Economic Co-operation and Development; (2) the Inter-American Development Bank; or (3) an organisation which was a designated international organisation[5] at the time of the transfer, whether or not it was such an organisation at the time the loan capital was issued or raised[6].

Subject to the following exceptions, stamp duty is not chargeable on an instrument which transfers any other loan capital[7]. This exemption does not apply to an instrument transferring loan capital which, at the time the instrument is executed[8], carries a right, exercisable then or later, of conversion into shares or other securities, or to the acquisition of shares or other securities, including loan capital of the same description[9]. Nor does it apply to an instrument transferring loan capital which, at the time the instrument is executed or any earlier time, carries or has carried:

132 (a) a right to interest the amount of which exceeds a reasonable commercial return on the nominal amount of the capital[10];

133 (b) a right to interest the amount of which falls or has fallen to be determined to any extent by reference to the results of, or of any part of, a business or to the value of any property[11]; or

134 (c) a right on repayment to an amount which exceeds the nominal amount of the capital and is not reasonably comparable with what is generally repayable, in respect of a similar nominal amount of capital, under the terms of issue of loan capital listed in the Official List of the Stock Exchange[12].

1 Ie under the Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' (as added and amended): see PARA 1065 et seq ante. As to the prospective abolition of bearer instrument duty see PARA 1004 ante.

2 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1986 s 114(4)).

3 For these purposes, 'loan capital' means (1) any debenture stock, corporation stock or funded debt, by whatever name known, issued by a body corporate or other body of persons (which here includes a local authority and any body whether formed or established in the United Kingdom or elsewhere); (2) any capital raised by such a body if the capital is borrowed or has the character of borrowed money, and whether it is in the form of stock or any other form; (3) stock or marketable securities issued by the government of any country or territory outside the United Kingdom: ibid ss 78(7), 79(12). For the meaning of 'stock' and 'marketable security' see PARA 1029 notes 4-5 ante (definitions applied by virtue of s 114(4)).

4 Ibid ss 78(3), 79(2).

5 For these purposes, 'designated international organisation' means an international organisation designated for the purposes of the Finance Act 1984 s 126 (as amended) by an order made under s 126(1) (see PARA 1098 text and note 15 ante): Finance Act 1986 ss 78(9), 79(12).

6 Ibid ss 78(4), 79(3).

7 Ibid s 79(4). During the period beginning on 25 March 1986 and ending on 6 July 1986 only, stamp duty was not chargeable on an instrument which transferred short-term loan capital; and 'short-term loan capital' meant loan capital the date, or latest date, for the repayment of which was not more than five years after the date on which it was issued or raised: s 78(1), (8). Section 78 applies to any instrument (1) which falls within the Finance Act 1963 s 60(1) (see PARA 1068 ante) and was issued after 24 March 1986 and before 7 July 1986; (2) which falls within s 60(2) (see PARA 1068 ante) if the loan capital constituted by or transferable by means of it was transferred after 24 March 1986 and before 7 July 1986; and (3) which does not fall within s 60(1) or (2) and was executed after 24 March 1986 and before 7 July 1986, unless it was executed in pursuance of a contract made on or before 18 March 1986: Finance Act 1986 s 78(11)-(13).

8 For the meaning of 'executed' see PARA 1007 note 5 ante (definition applied by virtue of ibid s 114(4)).

9 Ibid s 79(5).

10 Ibid s 79(6)(a). Section 79(4) is not prevented from applying to an instrument by virtue of s 79(6)(a) or (c) (see heads (a), (c) in the text) by reason only that the loan capital concerned carries a right to interest, or, as the case may be, to an amount payable on repayment, determined to any extent by reference to an index showing changes in the general level of prices payable in the United Kingdom over a period substantially corresponding to the period between the issue or raising of the loan capital and its repayment: s 79(7). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

11 Ibid s 79(6)(b).

12 Ibid s 79(6)(c). See also note 10 supra. Where stamp duty under the Stamp Act 1891 Sch 1, 'Conveyance or Transfer on Sale' (as amended) (see PARA 1027 ante) is chargeable on an instrument which transfers loan capital, the rate at which the duty is charged under that heading is the rate of 50p for every £100 or part of £100 of the amount or value of the consideration for the sale to which the instrument gives effect: ss 78(6), 79(8). Section 79 applies to any instrument which (1) falls within the Finance Act 1963 s 60(1) and is issued after 31 July 1986; (2) falls within s 60(2) if the loan capital constituted by or transferable by means of it is transferred after 31 July 1986; or (3) does not fall within s 60(1) or (2) and is executed after 31 July 1986: Finance Act 1986 s 79(9)-(11). In construing the Finance Act 1985 s 81(3) (definition by reference to the Finance Act 1976 s 126 (as amended)) (see PARA 1098 ante) the effect of the Finance Act 1986 ss 78, 79 is to be ignored: ss 78(10), 79(12). Section 79(2)-(8) is prospectively repealed, and s 79(12) amended, by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

340 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership

property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

341 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

342 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning

given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1101 Exemption for certain categories of loan capital**

TEXT AND NOTES--Finance Act 1986 ss 78(3)-(6), (8), (11)-(14), 79(1), (9)-(11) repealed except in relation to instruments relating to units under unit trusts: Finance Act 1999 Sch 20 Pt V(2).

NOTE 1--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 15 (bearer instruments).

NOTE 3--'Loan capital' now includes (4) any capital raised under arrangements which fall within the Finance Act 2005 s 48A (see INCOME TAXATION): Finance Act 1986 s 78(7)(d) (added by Finance Act 2008 s 154). In the application of the Finance Act 1986 s 79 to such loan capital, s 79(6) has effect with the omission of s 79(6)(a) and as if for s 79(6)(c) there were substituted: '(c) a right at the end of the bond term (within the meaning of the Finance Act 2005 s 48A(1)) to a payment of an amount that exceeds the aggregate of (i) the amount paid for the issue of the bond, and (ii) the notional payment amount, and for this purpose the "notional payment amount" means the amount of the payments that would represent a reasonable commercial return (the Finance Act 2005 s 48A(1)) on the bond over the bond term, less the amount of the payments already made': Finance Act 1986 s 79(8A) (added by Finance Act 2008 s 154). Also in such a case, the Finance Act 1986 s 79(6)(b), (7), (7A), (7B) and (13) have effect as if references to interest were references to additional payments; and s 79(7B) and (13) also have effect as if references to a capital market investment were references to such loan capital, and references to a capital market arrangement were to the arrangements under which that loan capital is raised: s 79(8A). 'Additional payments' has the meaning given by the Finance Act 2005 s 48A: Finance Act 1986 s 79(8A).

TEXT AND NOTE 11--The Finance Act 1986 s 79(4) is not prevented from applying by virtue of this exception (1) to an instrument by reason only that the loan capital carries interest which (a) reduces in the event of the results of a business or part of a business improving, or the value of any property increasing, or (b) increases in the event of the results of a business or part of a business deteriorating or the value of any property diminishing; or (2) to a capital market instrument by reason only that the capital market investment concerned carries or has carried a right to invest which ceases or decreases if, or to the extent that, the issuer, after meeting or providing for other obligations specified in the capital market arrangement concerned, has insufficient funds available from that arrangement to pay all or part of the interest otherwise due: Finance Act 1986 s 79, (6), (7A), (7B) (s 79(7A) added by Finance Act 2000 s 133; Finance Act 1986 s 79(6) amended, s 79(7B) added, by Finance Act 2008 s 101(2), (3)). 'Capital market instrument' means an instrument transferring a capital market investment issued as part of a capital market arrangement; and 'capital market investment' and 'capital market arrangement' have the same meaning as in the Insolvency Act 1986 Sch 2A paras 1-3 (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 383): Finance Act 1986 s 79(13) (added by the 2008 Act s 101(4)).

NOTE 12--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9). The rate of duty is now expressed as a percentage: Sch 14 para 17. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2). For the prospective repeal of Sch 14 para 17 from abolition day, see s 123(3); and PARAS 1004, 1005.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iv) Exemptions relating to Bearer Instruments and Securities/1102. Power to prescribe exemptions or reductions in relation to investment exchanges and clearing houses.

**1102. Power to prescribe exemptions or reductions in relation to investment exchanges and clearing houses.**

The Treasury may make regulations[1] providing that the charge to stamp duty is to be treated as not arising or, depending on the terms of the regulations, as reduced[2] with regard to any circumstances which:

135 (1) would otherwise give rise to a charge to stamp duty[3];
136 (2) involve (a) a prescribed[4] recognised investment exchange[5]; or (b) a prescribed recognised clearing house[6]; or (c) a member or nominee, or member or nominee of a prescribed description, of such an exchange; or (d) a nominee, or nominee of a prescribed description, of such a clearing house; or (e) a nominee, or nominee of a prescribed description, of a member of such an exchange[7]; and
137 (3) are such as are prescribed[8].

The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992[9] have been made in the exercise of these powers.

1 Regulations so made must be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: Finance Act 1991 s 116(3)(a). They may (1) include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury to be necessary or expedient; (2) make different provision for different circumstances; (3) make any provision in such way as the Treasury thinks fit, whether by amending enactments or otherwise: s 116(3)(b)-(d). In exercise of the powers so conferred, the Treasury has made the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992, SI 1992/570, which came into force on 22 March 1992: see reg 1. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Finance Act 1991 s 116(2).

3 Ibid s 116(1)(a).

4 'Prescribed' means prescribed by the regulations: ibid s 116(4)(a).

5 'Recognised investment exchange' means a recognised investment exchange within the meaning of the Financial Services Act 1986: Finance Act 1991 s 116(4)(b). LIFFE (London International Financial Futures Exchange) is prescribed as a recognised investment exchange for these purposes: see the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992 reg 3(a).

6 'Recognised clearing house' means a recognised clearing house within the meaning of the Financial Services Act 1986: Finance Act 1991 s 116(4)(c). The London Clearing House Limited is prescribed as a recognised clearing house for these purposes: see the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992 reg 3(b).

7 Financial Services Act 1986 s 116(1)(b). A member of LIFFE who is recognised as such by the board of directors and who buys and sells options to buy or sell equity securities is prescribed as a description of member for these purposes: see the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992 regs 2, 3(c). For the meaning of 'equity securities' see PARA 1104 note 12 post; and for the meaning of 'option' see PARA 1104 note 13 post.

8 Finance Act 1991 s 116(1)(c). For the prescribed circumstances see the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992 regs 4-6; and PARA 1104 post.

9 See notes 1-8 supra.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

343 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

344 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the

transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

345 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1102 Power to prescribe exemptions or reductions in relation to investment exchanges and clearing houses**

NOTES--See now the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (OM London Exchange Ltd) Regulations 1999, SI 1999/3262; Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (The London Stock Exchange) Regulations 2001, SI 2001/255, which prescribe the named exchanges as recognised investment exchanges. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 2004, SI 2004/3218, reg 3, prescribes EDX London as a recognised investment exchange. No charge to stamp duty or to stamp duty reserve tax arises where, in order to meet an obligation to receive securities resulting from the exercise of options or the expiration of a futures contract, equity securities of a particular kind are transferred or agreed to be transferred from (1) a non-clearing member or a nominee of a non-clearing member of EDX London to a clearing member thereof or a nominee of a clearing member, or (2) LCH.Clearnet or a nominee for LCH.Clearnet to a clearing member or a nominee of a clearing member: reg 5. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Eurex Clearing AG) Regulations 2007, SI 2007/1097 (amended by SI 2008/164), prescribe Eurex Clearing AG as a recognised clearing house

and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 2008, SI 2008/2777, prescribe Borse Berlin AG as a recognised investment exchange and LCH Clearnet Ltd as a recognised clearing house, and make simlar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (No 2) Regulations 2008, SI 2008/3235, prescribe Borse Berlin AG and PLUS Markets plc as recognised investment exchanges and LCH Clearnet Ltd as a recognised clearing house, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 2009, SI 2009/35, prescribe Euro Millennium Multilateral Trading Facility as a recognised investment exchange and SIX X-CLEAR AG as a recognised clearing house and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 2) 2009, SI 2009/194, prescribe the SmartPool Multilateral Trading Facility as a recognised investment exchange and the European Central Counterparty Ltd as a recognised clearing house, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 3) 2009, SI 2009/397, prescribe the NYSE Arca Europe as a recognised investment exchange and EuroCCP as a recognised clearing house, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 4) 2009, SI 2009/1115, prescribe Block Board as a recognised investment exchange and EuroCCP as a recognised clearing house, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 5) 2009, SI 2009/1344, prescribe Liquidnet H2O Multilateral Trading Facility as a recognised investment exchange and SIX X-CLEAR AG as a recognised clearing house, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 6) 2009, SI 2009/1462, prescribe BATS Trading Ltd multilateral trading facility as a recognised investment exchange and LCH Clearnet Ltd, SIX X-CLEAR AG, and European Multilateral Clearing Facility NV as recognised clearing houses, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 7) 2009, SI 2009/1601, prescribe Chi-X Europe Ltd and the European Multilateral Clearing Facility NV as recognised investment exchanges and LCH.Clearnet Ltd, SIX X-CLEAR AG as recognised clearing houses, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 8) 2009, SI 2009/1827, prescribe Turquoise Services Ltd as a recognised investment exchange and European Central Counterparty Ltd, LCH.Clearnet Ltd, and SIX X-CLEAR AG as recognised clearing houses, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 9) 2009, SI 2009/1828, prescribe LIFFE A&M as a recognised investment exchange and LCH.Clearnet Ltd as a recognised clearing house, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 10) 2009, SI 2009/1831, prescribe NASDAQ OMX Europe Ltd as a recognised investment exchange and European Multilateral Clearing Facility NV, and SIX X-CLEAR AG as recognised clearing houses, and make similar consequential provision. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 11) 2009, SI 2009/1832, prescribe the multilateral trading facility operated by Baikal Global Ltd as a recognised investment exchange and Cassa di Compensazione e Garanzia SpA and the European Multilateral Clearing Facility NV as recognised clearing houses, and make similar consequential provision.

NOTES 5, 6--References to Financial Services Act 1986 now to Financial Services and Markets Act 2000: Finance Act 1991 s 116(4)(b), (c) (amended by Financial Services

and Markets Act 2000 Sch 20 para 5(3)). SI 1992/570 reg 3(a), (b) now SI 1997/2429 reg 3(a), (b). 'Recognised investment exchange' also now includes a regulated market within the meaning of European Parliament and EC Council Directive 2004/39 on markets in financial instruments, as amended from time to time, and a multilateral trading facility within the meaning of Directive 2004/39: 1991 Act s 116(4) (amended by Finance Act 2007 Sch 21 para 7).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iv) Exemptions relating to Bearer Instruments and Securities/1103. Power to prescribe exemptions relating to stock exchange nominees.

**1103. Power to prescribe exemptions relating to stock exchange nominees.**

The Treasury may by regulations[1] provide that where (1) circumstances would otherwise give rise to a charge to conveyance on sale duty[2] and to a charge to stamp duty reserve tax[3]; (2) the circumstances involve a stock exchange nominee[4]; and (3) the circumstances are such as are prescribed[5], the charge to stamp duty is to be treated as not arising[6]. This power has not, however, been exercised[7].

1 The power to make regulations under the Finance Act 1989 s 175 (see the text and notes 2-5 infra) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 175(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Ie a charge to stamp duty under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended): see PARA 1027 et seq ante.

3 As to stamp duty reserve tax see PARA 1118 et seq post; and as to its prospective abolition see PARA 1119 post.

4 For these purposes, 'stock exchange nominee' means a person designated for the purposes of the Finance Act 1976 s 127(1) (as amended) (see PARA 1104 post) as a nominee of the Stock Exchange by an order made by the Secretary of State under s 127(5) (as amended) (see PARA 1104 post): Finance Act 1989 s 175(3)(b).

5 'Prescribed' means prescribed by the regulations: ibid s 175(3)(a).

6 Ibid s 175(1). At the date at which this volume states the law, no such regulations had been made. See further PARA 1104 note 1 post. Section 175 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

7 See note 6 supra.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

346 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

347 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

348 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a

person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

**1103 Power to prescribe exemptions relating to stock exchange nominees**

NOTE 2--Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 13 Pt I (paras 1-9). These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(iv) Exemptions relating to Bearer Instruments and Securities/1104. Exemption for transfers of securities to market institutions and intermediaries.

**1104. Exemption for transfers of securities to market institutions and intermediaries.**

No stamp duty is chargeable on transfers to SEPON Ltd as a designated stock exchange nominee[1], to the London Clearing House Ltd as a recognised clearing house in certain prescribed circumstances[2] or to members of the London International Financial Futures Exchange (LIFFE) in certain prescribed circumstances[3].

Stamp duty is not chargeable on an instrument[4] transferring stock[5] on sale to a person or his nominee if it is shown to the satisfaction of the Commissioners of Inland Revenue that the transaction to which the instrument gives effect was carried out by the person in the ordinary course of his business as a market maker[6] in stock of the kind transferred[7].

There is an exemption from ad valorem duty in relation to the borrowing of stock by a market maker where a person ('A') has contracted to sell stock in the ordinary course of his business as a market maker in stock of that kind[8] and, to enable him to fulfil the contract, he enters into an arrangement under which (1) another person ('B'), who is not a market maker in stock of the kind concerned or a nominee of such a market maker, is to transfer stock to A or his nominee; and (2) in return stock of the same kind and amount is to be transferred, whether or not by A or his nominee, to B or his nominee[9]. The exemption also applies where, to enable B to make the transfer to A or his nominee, B enters into an arrangement under which (a) another person ('C'), who is not a market maker in stock of the kind concerned or a nominee of such a market maker, is to transfer stock to B or his nominee; and (b) in return stock of the same kind and amount is to be transferred, whether or not by B or his nominee, to C or his nominee[10]. The maximum stamp duty chargeable on an instrument effecting a transfer to B or his nominee or C or his nominee in pursuance of any such arrangement is 50 pence[11].

Similar provisions apply to equity securities[12] borrowed by members of LIFFE[13].

Stamp duty is not chargeable on an instrument effecting a transfer of stock if the transferee is a recognised investment exchange[14] or recognised clearing house[15] or a nominee of either of these and a composition agreement[16] is in force at the time of the transfer[17].

1 See the Finance Act 1976 s 127(1) (amended by the Finance Act 1986 s 84(1)); the Finance Act 1976 s 127(5) (amended by the Finance Act 1986 s 114(6), Sch 23 Pt IX); and the Stock Exchange (Designation of Nominees) (Stamp Duty) Order 1979, SI 1979/370. The Secretary of State for Trade and Industry has power by order made by statutory instrument to designate a person for these purposes: see the Finance Act 1976 s 127(5) (as so amended), s 127(6). The Stock Exchange (Designation of Nominees) (Stamp Duty) Order 1979 was made in exercise of this power. The Finance Act 1989 ss 175, 176 enable the Treasury to make regulations relating to the incidence of stamp duty and stamp duty reserve tax upon the introduction of electronic share dealing under the CREST system in circumstances involving a stock exchange nominee designated under the Finance Act 1976 s 127 (as amended): see PARAS 1005 ante, 1129 post. Provision has been made for the Commissioners of Inland Revenue to enter into composition agreements for the payment of stamp duty with any recognised investment exchange or recognised clearing house: see PARA 1106 post. The Finance Act 1989 ss 175, 176 and the Finance Act 1976 s 127(1), (5), (as so amended) and s 127(6) are prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1104 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

2 See the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992, SI 1992/570, regs 3, 4.

3 See ibid reg 5.

4 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1986 s 114(4)).

5 For these purposes, 'stock' includes marketable security: ibid s 85(5)(d). For the meaning of 'marketable security' see PARA 1029 note 5 ante (definition applied by virtue of s 114(4)).

6 For the purposes of ibid s 81 (as amended), a person is a market maker in stock of a particular kind: (1) if he holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell stock of that kind at a price specified by him and is recognised as doing so by the Council of the Stock Exchange; (2) if (a) he is an authorised person under the Financial Services Act 1986 Pt I Ch III (ss 7-34); (b) he carried out the transaction in the course of his business as a dealer in investments within the meaning of s 1, Sch 1 para 12 as a principal and in circumstances where Sch 1 para 12 was applicable for the purposes of the Financial Services Act 1986; (c) he did not carry out the transaction in the course of any activities which fall within Sch 1 paras 14 or 16; and (d) the stock was not at the time the transaction was carried out dealt in on a recognised investment exchange within the meaning of that Act; or (3) if (a) that person is a European institution, within the meaning of the Banking Co-ordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 3, which carries on investment business (within the meaning of the Financial Services Act 1986 s 1(2)) in the United Kingdom; (b) the transaction was carried out by the institution as a principal in the course of its investment business; (c) the transaction was not carried out in the course of any activities which fall within Sch 1 paras 14 or 16; and (d) the stock was not at the time the transaction was carried out dealt in on a recognised investment exchange: Finance Act 1986 s 81(3) (substituted by the Finance Act 1986 (Stamp Duty and Stamp Duty Reserve Tax) (Amendment) Regulations 1992, SI 1992/3286, reg 2); Finance Act 1986 s 85(5)(b).

The Treasury may by regulations provide that for the Finance Act 1986 s 81(3) as it has effect for the time being there is to be substituted a subsection containing a different definition of a market maker for these purposes: s 81(5). Regulations so made apply in relation to any instrument giving effect to a transaction carried out on or after such day after the day of the stock exchange reforms (the day on which the rule of the Stock Exchange that prohibited a person from carrying on business as both a broker and a jobber was abolished (ie 27 October 1986)) as is specified in the regulations: ss 81(6), 85(5)(a). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 81(7). In exercise of the power so conferred, the Treasury has made the Finance Act 1986 (Stamp Duty and Stamp Duty Reserve Tax) (Amendment) Regulations 1992, which came into force on 1 January 1993 and specify that day for the purpose of regulations under the Finance Act 1986 s 81(5): see the Finance Act 1986 (Stamp Duty and Stamp Duty Reserve Tax) (Amendment) Regulations 1992 reg 1.

7 Finance Act 1986 s 81(1). An instrument on which stamp duty is not chargeable by virtue only of s 81(1) is not deemed to be duly stamped unless it has been stamped with a stamp denoting that it is not chargeable with any duty (ie under the Stamp Act 1891 s 12 (as amended): see PARA 1111 post); and notwithstanding anything in s 122(1) (meaning of 'stamp': see PARA 1022 note 4 ante), the stamp may be a stamp of such kind as the commissioners may prescribe: Finance Act 1986 s 81(2). Subject to s 81(6) (see note 6 supra), s 81 (as amended) applies to any instrument giving effect to a transaction carried out on or after 27 October 1986: ss 81(4), 85(5)(a). Sections 81, 85 are prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

8 For the purposes of the Finance Act 1986 s 82, a person is a market maker in stock of a particular kind if he holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell stock of that kind at a price specified by him and is recognised as doing so by the Council of the Stock Exchange: s 82(4). The Treasury may by regulations provide that for s 82(4) as it has effect for the time being there is to be substituted a subsection containing a different definition of a market maker for these purposes: s 82(6) (amended by the Finance Act 1987 s 53). Regulations so made apply in relation to any instrument effecting a transfer in pursuance of an arrangement entered into on or after such day after 27 October 1986 as is specified in the regulations: Finance Act 1986 ss 82(7), 85(5)(a). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 82(8). At the date at which this volume states the law, no such regulations had been made. Cf the power to make regulations under s 81(5); as to the exercise of that power see note 6 supra.

9 Ibid s 82(1).

10 Ibid s 82(2).

11 Ibid s 82(3). Subject to s 82(7) (see note 8 supra), s 82 (as amended) applies to any instrument effecting a transfer in pursuance of an arrangement entered into on or after 27 October 1987: ss 82(5), 85(5)(a). Section 82 is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day.

12 For these purposes, 'equity securities' means stocks and shares which are issued or raised by a company but does not include stocks and shares issued or raised by a company not incorporated in the United Kingdom unless (1) they are registered in a register kept in the United Kingdom by or on behalf of the company; or (2) in

the case of shares, they are paired, within the meaning of the Finance Act 1986 s 99(6A) (as added: see PARA 1124 post), with shares issued by a company incorporated in the United Kingdom: Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992, SI 1992/570, reg 2. For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

13 See ibid reg 6. A charge to stamp duty is treated as reduced in accordance with the Finance Act s 82(3) where (1) the provisions of s 82(1), (2) apply; (2) the stock referred to therein consists of equity securities of a particular kind; (3) the person referred to therein as 'A' is a member of LIFFE (A&M) who is recognised as such by the board of directors and who buys and sells options to buy or sell equity securities; and (4) the transfer to A is a transfer to which the Income and Corporation Taxes Act 1988 s 129(3) (as amended) applies: Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992 regs 2, 3(c), 6(1), (2). 'Option' means an option to buy or sell securities which is listed by and traded on LIFFE: reg 2.

14 Ie within the meaning of the Financial Services Act 1986: Finance Act 1986 s 85(5)(b).

15 Ie within the meaning of the Financial Services Act 1986: Finance Act 1986 s 85(5)(c).

16 Ie under the Finance Act 1970 s 33 (as amended): see PARA 1106 post.

17 Finance Act 1986 s 84(2), (3). Section 84(2), (3) applies to any instrument giving effect to a transaction carried out on or after such day as the commissioners may appoint by order made by statutory instrument: s 84(5), (6). Section 84 is prospectively repealed by the Finance Act 1990 Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed; and no day had been appointed under s 84(5), (6).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

349 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

350 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch

15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

351 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1082-1105 Exemptions from Stamp Duty**

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

## 1104 Exemption for transfers of securities to market institutions and intermediaries

NOTES--1992 Regulations now replaced by Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 9) 2009, SI 2009/1828 (see PARA 1102).

TEXT AND NOTES 4-11--Finance Act 1986 ss 81, 82 replaced by ss 80A-80C (substituted by Finance Act 1997 ss 97, 98; and amended by Finance Act 2007 Sch 21 para 5). The substituted provisions are themselves prospectively repealed from the abolition day (see PARA 1004): Finance Act 1986 Sch 18 Pt VII. The Treasury may by regulations amend ss 80A, 80B (as they have effect for the time being) in order to extend the exemption from duty: s 80B(5A).

Stamp duty is not chargeable on any of the following instruments: (1) an instrument (see PARA 1001) transferring stock (which term includes any marketable security) of a particular kind on sale to a person or his nominee if (a) the person is a member of a regulated market on which stock of that kind is regularly traded; and (b) the person is an intermediary and is recognised as such by the market in accordance with arrangements approved by the commissioners; (2) an instrument transferring stock of a particular kind on sale to a person or his nominee if (a) the person is a member of a multilateral trading facility, or a recognised foreign exchange, on which stock of that kind is regularly traded; (b) the person is an intermediary and is recognised as such by the facility or exchange in accordance with arrangements approved by the commissioners; and (c) the sale is effected on the facility or exchange; (3) an instrument transferring stock of a particular kind on sale to a person or his nominee if (a) the person is an intermediary who is approved for this purpose by the commissioners; and (b) stock of that kind is regularly trade on a regulated market; (4) an instrument transferring stock of a particular kind on sale to a person or his nominee if (a) the person is an intermediary who is approved for this purpose by the commissioners; (b) stock of that kind is regularly traded on a multilateral trading facility or a recognised foreign exchange; and (c) the sale is effected on the facility or exchange; (5) an instrument transferring stock of a particular kind on sale to a person or his nominee if (a) the person is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange; (b) options to buy and sell stock of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange (c) the person is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the commissioners; and (d) stock of that kind is regularly traded on a regulated market; (6) an instrument transferring stock of a particular kind on sale to a person or his nominee if (a) the person is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange; (b) options to buy or sell stock of that kind are regularly trade on, and are listed by or quoted on, that market, facility or exchange; (c) the person is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the commissioners; and (d) the sale is effected on a relevant qualifying exchange on which stock of that kind is regularly traded or is effected on such an exchange pursuant to the exercise of a relevant option and options to buy and sell stock of that kind are regularly traded on, and are listed or quoted on, that exchange; (7) an instrument transferring stock of a particular kind on sale to a person or his nominee if (a) the person is an options intermediary who is approved for this purpose by the commissioners; (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or recognised foreign options exchange; and (c) stock of that kind is regularly trade on a regulated market; (8) an instrument transferring stock of a particular kind on sale to a person or his nominee if

(a) the person is an options intermediary approved for this purpose by the commissioners; (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and (c) the sale is effected on a relevant qualifying exchange on which stock of that kind is regularly traded or is effected on such an exchange pursuant to the exercise of a relevant option and options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that exchange: Finance Act 1986 s 80A(1)-(2C). 'Relevant qualifying exchange' means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange: s 80A(2A), (2C). 'Multilateral trading facility' and 'regulated market' have the same meaning as in European Parliament and EC Council Directive 2004/39 on markets in financial instruments, as amended from time to time: Finance Act 1986 s 80B(2), (2A). The commissioners may approve a person for these purposes only if that person is authorised under the law of an EEA state to provide any of the investment services or activities listed in Directive 2004/39 Annex 1, Section A2 or 3, whether or not the person is authorised under Directive 2004/39: Finance Act 1986 s 80A(6A). 'EEA state', in relation to any time, means a state which at that time is a member state or any other state which at that time is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 (as modified or supplemented from time to time): Finance Act 1986 s 80B(2). A sale is effected on a facility or exchange if (and only if) it is subject to the rules of that facility or exchange and it is reported to the facility or exchange in accordance with those rules: s 80A(6).

The Treasury may by regulations provide that if an instrument falls within s 80A(1)-(2C) and stamp duty would otherwise be chargeable on that instrument, such duty is to be chargeable at a rate, specified in the regulations, which must not exceed 0·1%: s 80B(7) (amended by Finance Act 1999 Sch 14 para 18; and Finance Act 2007 Sch 21 para 2). A similar provision applies to instruments which would be chargeable were it not for the Finance Act 1986 s 80C(2): s 80C(8) (amended by Finance Act 1999 Sch 14 para 19). This amended provision does not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122. For the prospective repeal of Sch 14 paras 18, 19 from abolition day, see s 123(3); and PARAS 1004, 1005.

An intermediary is a person who carries on a bona fide business of dealing in stock and does not carry on an excluded business, and an options intermediary is a person who carries on a bona fide business of dealing in quoted or listed options (ie options quoted on or listed by an EEA exchange or a recognised foreign option exchange) to buy or sell stock and does not carry on an excluded business. Excluded businesses are: any business which consists wholly or mainly in the making or managing of investments; any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected (within the meaning of the Income and Corporation Taxes Act 1988 s 839: see INCOME TAXATION) with the person carrying on the business; any business which consists in insurance business; any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme; and any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme. 'Insurance business' means business which consists of the effecting or carrying out of contracts of insurance (within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 3(1); 'collective investment scheme' has the same meaning as in the Financial Services and Markets Act 2000 s 235 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603); 'operator', in relation to a collective investment scheme, is to be construed in

accordance with s 237(2) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 603, 606); and 'trustee', in relation to such a scheme, means a trustee or a depositary within the meaning given in s 237(2) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 603, 606): Finance Act 1986 ss 80A(4), (5), 80B(1), (2) (s 80B(2) amended by SI 2001/3629).

'The exercise of a relevant option' means the exercise by the options intermediary concerned of an option to buy stock, or the exercise of an option binding the options intermediary concerned to buy stock: Finance Act 1986 s 80B(5).

Where a person (A) has entered into an arrangement with another person (B) under which B is to transfer stock of a particular kind to A or his nominee, and stock of the same kind and amount is to be transferred by A or his nominee to B or his nominee, stamp duty is not chargeable on either transfer instrument, provided that (1) that A or B is authorised under the law of an EEA state to provide any of the investment services or activities listed in Directive 2004/39 Annex I, Section A2 or 3 in relation to stock of the kind concerned, whether or not A or B is authorised under the directive and that stock of the kind concerned is regularly traded on a regulated market; or (2) the arrangement is effected on a regulated market, a multilateral trading facility or a recognised foreign exchange and that stock of the kind concerned is regularly traded on that market, facility or exchange. This provision does not apply to an arrangement which is not such as would be entered into by persons dealing with each other at arm's length, or an arrangement under which any of the benefits or risks arising from fluctuations, before the transfer to B or his nominee takes place, in the market value of the stock accrues to, or falls on, A: Finance Act 1986 s 80C(1)-(3). An arrangement is effected on a market, a facility or an exchange if (and only if) it is subject to the rules of that market, facility or exchange and it is reported to the market, facility or exchange in accordance with those rules: s 80C(6).

An instrument (see PARA 1001) on which stamp duty is not chargeable by virtue only of these provisions is not deemed to be duly stamped unless it has been stamped with a stamp denoting that it is not chargeable with any duty; and notwithstanding anything in the Stamp Act 1891 s 122(1) (see PARA 1007), the stamp may be a stamp of such kind as the commissioners may prescribe: Finance Act 1986 ss 80A(7), 80C(5).

The Treasury may by regulations (made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons) extend the application of the Finance Act 1986 ss 80A, 80C to any market (specified by name or by description) that is not a recognised exchange but is prescribed by order under the Financial Services and Markets Act 2000 s 118(3) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 437): Finance Act 2002 s 117(1), (2), (5). However, s 117 ceases to have effect on such day as the Treasury may by order appoint: Finance (No 2) Act 2005 s 50(6). 'Recognised exchange' means an EEA exchange or a recognised foreign exchange or a recognised foreign options exchange: s 117(3). Such regulations may provide for the application of the Finance Act 1986 ss 80A, 80C subject to any adaptations appearing to the Treasury to be necessary or expedient: Finance Act 2002 s 117(4). See Stamp Duty and Stamp Duty Reserve Tax (Extension of Exceptions relating to Recognised Exchanges) Regulations 2002, SI 2002/1975; Stamp Duty and Stamp Duty Reserve Tax (Extension of Exceptions relating to Recognised Exchanges) Regulations 2004, SI 2004/2421.

TEXT AND NOTES 12, 13--1992 Regulations reg 6 revoked and not replaced by SI 1997/2429.

NOTE 14--The reference is now to the Financial Services and Markets Act 2000 s 285(1)(a): Finance Act 1986 s 85(5)(b) (amended by SI 2001/3629).

NOTE 15--The reference is now to the Financial Services and Markets Act 2000 s 285(1)(b): Finance Act 1986 s 85(5)(c) (amended by SI 2001/3629).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(5) EXEMPTIONS FROM STAMP DUTY/(v) Miscellaneous Exemptions/1105. Miscellaneous exemptions.

## (v) Miscellaneous Exemptions

### 1105. Miscellaneous exemptions.

The following instruments[1] are exempted from all stamp duties:

138 (1) instruments of apprenticeship[2];
139 (2) articles of clerkship to a solicitor[3];
140 (3) bonds given pursuant to the directions of any Act, or of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or any of their officers, for or in respect of any of the duties of excise or customs, or for preventing frauds or evasions of them, or for any other matter or thing relating to them[4];
141 (4) forms of application for legal aid and forms relating to the offer and acceptance of a certificate pursuant to such an application[5];
142 (5) contracts of service, or memoranda of contracts of service, in any office or employment, or contracts varying or terminating any such contract[6];
143 (6) transfers to certain educational bodies[7];
144 (7) certain transfers under the Museums and Galleries Act 1992[8].

Some statutory exemptions[9] are confined to a single instrument or transaction and therefore are not of general interest. Some exemptions from stamp duty are dealt with in other titles of this work. These include total exemptions or partial relief in respect of instruments creating agricultural charges[10]; documents relating to bankrupts' estates[11]; certain building society documents[12]; conveyances or transfers of property accepted in satisfaction of inheritance tax[13]; conveyances of land for civil aviation purposes[14]; hire purchase agreements[15]; certain grants for ecclesiastical purposes[16]; certain friendly society documents[17]; certain documents relating to land registration[18]; certain loan society documents[19]; certain documents relating to national health[20] and social security[21]; certain instruments relating to trunk roads[22]; and certain documents connected with schemes relating to the continuation of workmen's compensation[23].

In addition, stamp duty is not chargeable on any appointment, certificate, declaration, licence or thing under the Animal Health Act 1981, or an order of the Minister of Agriculture, Fisheries and Food or a regulation of a local authority[24]; or an instrument relating to a Community patent or to an application for a European patent[25]; and there is an exemption for certain transfers of property to the Secretary of State for Industry or his nominee in connection with the Welsh Development Agency[26].

Temporary relief from stamp duty was granted in respect of certain instruments (a) executed on or after 20 December 1991 and before 16 January 1992 and not stamped before 16 January 1992; or (b) executed on or after 16 January 1992 and before 20 August 1992[27].

The above examples are by way of illustration only and do not purport to constitute an exhaustive list.

1 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1949 s 52(5)).

2 Ibid s 35(1)(b), Sch 8 Pt I para 4. 'Instrument of apprenticeship' means every writing relating to the service or training of any apprentice, clerk or servant placed with any master to learn any profession, trade or

employment, except articles of clerkship to a solicitor: Stamp Act 1891 s 25 (definition applied by virtue of the Finance Act 1949 s 52(5)).

3 Ibid Sch 8 Pt I para 5. Articles of clerkship have been replaced by training contracts: see LEGAL PROFESSIONS vol 65 (2008) PARA 651 et seq.

4 Ibid Sch 8 Pt I para 8 (amended by the Administration of Estates Act 1971 s 12(2), Schedule Pt II).

5 Finance Act 1963 s 65(3); Interpretation Act 1978 s 17(2)(a).

6 Finance Act 1964 s 23(1). This exemption has effect from 6 July 1964: s 23(2).

7 See the Education Reform Act 1988 s 230 (as amended); the Education Act 1993 s 299; and see generally EDUCATION.

8 See the Museums and Galleries Act 1992 s 8.

9 See eg the Chevening Estate Act 1959 s 2(8).

10 See the Agricultural Credits Act 1928 s 8(8); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1328.

11 See the Insolvency Act 1986 s 378; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 763.

12 See the Building Societies Act 1986 s 109 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1857.

13 See the National Heritage Act 1980 s 11; and INHERITANCE TAXATION vol 24 (Reissue) PARA 682.

14 See the Civil Aviation Act 1982 s 59(2); and AIR LAW vol 2 (2008) PARA 225.

15 See the Finance Act 1907 s 7 (amended by the Finance Act 1985 s 85(2)).

16 See (1) the Church Building Act 1822 s 28; the New Parishes Measure 1943 s 18; CREMATION AND BURIAL vol 10 (Reissue) PARA 1006; and ECCLESIASTICAL LAW vol 14 para 1063; (2) the Consecration of Churchyards Act 1867 s 6; CREMATION AND BURIAL vol 10 (Reissue) PARA 1007; and ECCLESIASTICAL LAW vol 14 para 1072 note 4; and (3) the Parsonages Measure 1938 s 18; and ECCLESIASTICAL LAW vol 14 para 1140 note 17.

17 See the Friendly Societies Act 1992 s 105; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2383.

18 See the Land Registration Act 1925 s 130; and LAND REGISTRATION vol 26 (Reissue) PARA 826; and the Land Registration Rules 1925, SR & O 1925/1093, r 309.

19 See the Loan Societies Act 1840 ss 7, 9, 14.

20 See the National Health Service Act 1977 s 96(3); and HEALTH SERVICES vol 54 (2008) PARA 71. See also the National Health Service Reorganisation Act 1973 s 49; and the National Health and Community Care Act 1990 s 61(3) (NHS trusts).

21 See the Social Security Administration Act 1992 s 188.

22 See the Highways Act 1980 s 281; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 714.

23 See the Social Security Administration Act 1992 s 188(3).

24 Animal Health Act 1981 s 85.

25 See the Patents Act 1977 s 126.

26 See the Industry Act 1980 s 2(2) (amended by the British Technology Group Act 1991 s 17(2), Sch 2 Pt I).

27 See the Stamp Duty (Temporary Provisions) Act 1992 s 1(2). In relation to such instruments, the Finance Act 1963 s 55 (rate of stamp duty on conveyance or transfer on sale: see PARA 1027 ante) had effect as if the references to £30,000 (now £60,000) in s 55(1) were to £250,000 and the references to £300 (now £500) in s 55(2) were to £2,500: see the Stamp Duty (Temporary Provisions) Act 1992 s 1(1). For the purposes of the Stamp Act 1891 s 14(4) (instruments not to be given in evidence etc unless stamped in accordance with the law in force at the time of first execution: see PARA 1007 ante) the law in force at the time of execution of an

instrument falling within head (a) in the text is deemed to be that as varied in accordance with the Stamp Duty (Temporary Provisions) Act 1992 s 1(1): s 1(3).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

352 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

353 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in

the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

354 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1082-1105 Exemptions from Stamp Duty

Instruments for the sale, transfer or other disposition of intellectual property are exempt from stamp duty: see the Finance Act 2000 s 129; and PARA 1096A. Transfers to registered social landlords etc are also exempt: see s 130; and PARA 1096B.

### 1105 Miscellaneous exemptions

TEXT AND NOTES--Subject to certain conditions, stamp duty is not chargeable on an instrument executed for the purposes of a transfer from a company to another person of business consisting of the effecting or carrying out of contracts of insurance which is effected under an insurance business transfer scheme; or a transfer of the whole or any part of the business of a general insurance company carried on through a branch or agency in the United Kingdom which takes place in accordance with any authorisation granted outside the United Kingdom for the purposes of the life assurance consolidation directive art 14 or the third non-life insurance directive art 12 (a 'relevant transfer'): Finance Act 1997 s 96(2)-(4), (7) (amended by SI 2001/3629, SI 2004/3379). The relevant transfer must take place under a scheme, and comprise the whole or any part of the business carried on by a mutual insurance company to a company which has a share capital: Finance Act 1997 s 96(1). 'Contract of insurance' has the meaning given by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 3(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 90 NOTE 3); 'insurance business transfer scheme' has the same meaning

as in the Financial Services and Markets Act 2000 Pt 7 (ss 104-117) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 590 et seq); 'general insurance company' means a company which has permission under Pt 4 (ss 40-55) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 348 et seq) or under Sch 3 para 15 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315) (as a result of qualifying for authorisation under Sch 3 para 12(1)) to effect or carry out contracts of insurance; and 'insurance company' means a company which carries on the business of effecting or carrying out such contracts: Finance Act 1997 s 96(8). The 'life assurance consolidation directive' means EC Parliament and Council Directive 2002/83; and the 'third non-life insurance directive' means EC Council Directive 92/49 (which amends EC Council Directives 73/239, 88/357): Finance Act 1997 s 96(8) (amended by SI 2001/3629, SI 2004/3379).

For similar exemptions from stamp duty land tax, see the Chequers Estate Act 1917 s 3A; the Chevening Estate Act 1959 s 2A; the Friendly Societies Act 1974 s 105A; the National Heritage Act 1980 s 11A; the Highways Act 1980 s 281A; the Building Societies Act 1986 s 109A; the Friendly Societies Act 1992 s 105A; the Further and Higher Education Act 1992 s 88A; the Museums and Galleries Act 1992 s 8A; and the Health Authorities Act 1995 Sch 2 para 5(2A), (2B) (all added by SI 2003/2867 (amended by SI 2005/82)).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--Stamp Act 1891 s 25 repealed: Statute Law (Repeals) Act 2008.

NOTE 5--Finance Act 1963 s 65(3) repealed: Statute Law (Repeals) Act 2008.

NOTE 6--Finance Act 1964 repealed: Statute Law (Repeals) Act 2008.

NOTE 18--Land Registration Act 1925 replaced by Land Registration Act 2002: see LAND REGISTRATION.

TEXT AND NOTE 19--1840 Act repealed: Statute Law (Repeals) Act 1998.

NOTE 20--1990 Act s 61(3) (amended by Health Act 1999 Sch 4 para 82; and National Health Service Reform and Health Care Professions Act 2002 Sch 5 para 35) also applies to primary care trusts (see further HEALTH SERVICES vol 54 (2008) PARA 111 et seq) and local health boards.

The 1990 Act s 61(3) applies to an NHS foundation trust as it applies to an NHS trust: National Health Service Act 2006 s 58.

TEXT AND NOTE 25--Patents Act 1977 s 126 repealed: Finance Act 2000 Sch 40 Pt III.

TEXT AND NOTE 26--1980 Act s 2 repealed: SI 2005/3226.

## (6) ADMINISTRATION AND ASSESSMENT

## (i) Management

### 1106. Management of stamp duties.

Stamp duties are under the care and management of the Commissioners of Inland Revenue[1], who, in addition to their general powers in respect of the Inland Revenue[2], are specially empowered to compel any person who receives such duties to account for them and pay the money to the commissioners[3]; to frame regulations with regard to allowances for spoiled or misused stamps[4]; to discontinue the use of an old die[5] with or without the provision of a new one[6]; and to issue warrants for the search of premises of persons suspected of possessing forged stamps[7].

The commissioners are empowered to enter into an agreement with, or with persons acting on behalf of, a recognised stock exchange[8] for the composition of the stamp duty chargeable on conveyances or transfers on sale or on conveyances or transfers of any other kind[9] on such instruments[10] as may be specified in the agreement[11]. Provision has been made for the commissioners to enter into such agreements with any recognised investment exchange or clearing house[12].

There are a number of provisions which confer certain powers upon the commissioners in relation to adhesive stamps[13] but such stamps are no longer used[14].

The commissioners delegate the day to day administration of stamp duties in England and Wales and in Northern Ireland to the Controller of Stamps[15].

1 Stamp Duties Management Act 1891 ss 1, 27. As to the commissioners see INCOME TAXATION vol 23(1) (Reissue) PARA 31 et seq. Any licence or certificate to be granted by the commissioners may be granted by such officer or person as they authorise in that behalf: s 25.

2 See INCOME TAXATION vol 23(1) (Reissue) PARA 31 et seq, INCOME TAXATION vol 23(2) (Reissue) PARA 1814 et seq. Where the House of Commons passes a resolution which (1) provides for the variation or abolition of an existing stamp duty; (2) is expressed to have effect for a period stated in the resolution in accordance with the Finance Act 1973 s 50(2) (as amended); and (3) contains a declaration that is it expedient in the public interest that the resolution should have statutory effect under these provisions, then the resolution has statutory effect, for the period so stated, as if contained in an Act of Parliament: s 50(1) (amended by the Finance Act 1975 ss 52(2), 59(5), Sch 13 Pt I). The period to be stated in a resolution is a period expressed as beginning on a date so stated and ending on, or 31 days or such less number of days as may be so stated after, the earliest of the following dates: (a) the thirtieth day on which, after the day the resolution is passed, the House of Commons sits without a Bill containing provisions to the same effect as the resolution being read a second time and without a Bill being amended (whether by the House or a Committee of the House or a Standing Committee) so as to include such provisions; (b) the rejection of such provisions during the passage through the House of a Bill containing them; (c) the dissolution or prorogation of Parliament; and (d) the expiration of the period of six months beginning with the day on which the resolution takes effect: Finance Act 1973 s 50(2) (amended by the Finance Act 1993 s 207). A resolution ceases to have statutory effect under these provisions if an Act comes into operation varying or abolishing the duty (Finance Act 1973 s 50(3)); but the ending of the period for which a resolution has such statutory effect does not affect the validity of anything done during that period (s 50(4)). Section 50 extends to Northern Ireland and applies to stamp duties having effect there as well as to stamp duties having effect in Great Britain: Finance (No 2) Act 1975 s 72. For the meaning of 'Great Britain' see PARA 1007 note 6 ante. The Provisional Collection of Taxes Act 1968 does not apply to stamp duty (although it does apply to stamp duty reserve tax: see PARA 1118 note 12 post): see s 1(1) (as amended); and INCOME TAXATION vol 23(1) (Reissue) PARA 18. As to stamp duty reserve tax see PARA 1118 et seq post; and as to its prospective abolition see PARA 1119 post.

3 Stamp Duties Management Act 1891 s 2(2). Having regard to the Crown Proceedings Act 1947, the provisions of the Stamp Duties Management Act 1891 s 2(2) in relation to procedure would appear to be obsolete. Compliance may be enforced by attachment: *Re Coulson* (1894), cited in Highmore's Stamp Laws (4th Edn) 17.

4 See the Stamp Duties Management Act 1891 s 9; and PARA 1107 post. 'Stamp' means as well a stamp impressed by means of a die as an adhesive stamp for denoting any stamp duty or fee: s 27. The same definition appears in the Stamp Act 1891 s 122(1): see PARA 1022 note 4 ante.

5 'Die' includes any plate, type, tool or implement whatever used under the direction of the commissioners for expressing or denoting any stamp duty or rate of duty, or the fact that any duty or rate of duty or penalty has been paid, or that an instrument is duly stamped, or is not chargeable with any duty or for denoting any fee, and also any part of any such plate, type, tool or implement: Stamp Duties Management Act 1891 s 27.

6 See ibid s 22; and the Revenue Act 1898 s 10 (amended by the Post Office Act 1969 s 141, Sch 11 Pt II). Notice of the discontinuance of the use of a die is given by the commissioners in the London, Edinburgh, and Belfast Gazettes, naming a day not less than one month after the publication of the notice, after which the die is not to be a lawful die for denoting the payment of duty: Stamp Duties Management Act 1891 s 22; Government of Ireland (Adaptation of the Taxing Acts) Order 1922, SR & O 1922/80, art 17. No instrument first executed or dated after that day is deemed to be duly stamped if the payment is denoted by the discontinued die (Stamp Duties Management Act 1891 s 22); but if any such instrument has been first executed outside the United Kingdom, it must be stamped with the lawful die without payment of any penalty, if presented within 14 days of its being received in the United Kingdom (s 22). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

7 Ibid s 18(2): see PARA 1113 note 15 post.

8 'Recognised stock exchange' means the Stock Exchange, London, and any other stock exchange declared by an order in force under the Stock Transfer Act 1963 s 4 (as amended) (see COMPANIES vol 14 (2009) PARA 400) to be a recognised stock exchange for the purposes of that Act: Finance Act 1970 s 33(1). Section 33(1) is prospectively amended by the Finance Act 1986 s 83(1) so as to delete the reference to a recognised stock exchange and substitute 'any recognised investment exchange or recognised clearing house' (within the meaning of the Financial Services Act 1986), as from a day to be appointed by statutory instrument under the Finance Act 1986 s 83(3). At the date at which this volume states the law, no such day had been appointed.

9 Ie chargeable under or by reference to the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer on Sale' (as amended) (see PARA 1027 ante) or 'Conveyance or Transfer of any kind not hereinbefore described' (see PARA 1077 ante).

10 For the meaning of 'instrument' see PARA 1001 ante (definition applied by virtue of the Finance Act 1970 s 36(3)).

11 Ibid s 33(1) (amended by the Finance Act 1976 ss 127(4), 132(5), Sch 15 Pt VI). Such an agreement must provide (1) for every instrument concerned to bear on its face an indication of the amount of duty chargeable on it; (2) for the issue by the stock exchange in respect of every such instrument of a certificate that stamp duty will be accounted for to the commissioners; (3) for the delivery to the commissioners of periodical accounts of instruments concerned, giving such particulars with respect to them as may be specified in the agreement; and (4) for the payment by or on behalf of the stock exchange to the commissioners of the aggregate amount of duty chargeable on the instruments concerned during the period to which the account relates, and may contain such other terms and conditions as the commissioners think proper: Finance Act 1970 s 33(2). An instrument to which such an agreement relates and in respect of which such a certificate has been issued is deemed to be stamped with the duty indicated on the instrument: s 33(4). A stock exchange or person making default in delivering any account so required, or in paying any amount in accordance with such an agreement, is liable to a fine not exceeding £50 for any day during which the default continues; and, in addition, every amount payable under such an agreement bears interest at the rate of 5% per annum from the due date for delivery of the account by reference to which it is payable until the actual date of payment: s 33(5). As to the recovery of fines see PARA 1117 post.

References in the Stamp Duties Management Act 1891 ss 9, 10 (as amended) (see PARAS 1107-1108 post), to stamps include references to any indication of an amount of duty on the face of any instrument to which such an agreement relates: Finance Act 1970 s 33(6). Section 33(2)(b), (c), (d), (4), (5) is prospectively amended by the Finance Act 1986 s 83(2) so as to delete the reference to 'stock exchange' and substituted the words 'recognised investment exchange or recognised clearing house' as from a day to be appointed by order made by statutory instrument under s 83(3). At the date at which this volume states the law, no such order had been made. The Finance Act 1970 s 33 (as amended) is prospectively repealed by the Finance Act 1990 as from a day to be appointed by the Treasury by order made by statutory instrument: see ss 109(6)(c), (7), (8), 132, Sch 19 Pt VI. At the date at which this volume states the law, no such order had been made. As to the power to make orders under s 109 see PARA 1075 ante. The Finance Act 1986 s 83 is prospectively repealed by the

Finance Act 1990 Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

12 See the Finance Act 1986 ss 83, 84(2), (3); note 11 supra; and PARA 1104 ante.

13 See eg the Stamp Duties Management Act 1891 s 3 (power to license persons to deal in stamps), s 4 (penalties for unauthorised dealing in stamps), s 12 (repurchase of stamps).

14 See PARA 1022 ante.

15 The head office of the Controller of Stamps is at Bush House, South-West Wing, Strand, London WC2B 4QN. The Adjudication and Shares Units are at the Stamp Office, Ridgeworth House, Liverpool Gardens, Worthing BN11 1XP. There are Network Stamp Offices at Birmingham, Bristol, Manchester and Newcastle-upon-Tyne.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

355 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

356 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the

stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

357 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1106 Management of stamp duties**

NOTE 1--Stamp Duties Management Act 1891 s 25 repealed: Finance Act 1999 Sch 18 para 6, Sch 20 Pt V(4).

NOTE 2--Reference to a Standing Committee is now to a Public Bill Committee: Finance Act 1973 s 50(2) (amended by Finance Act 2007 s 112(2)).

TEXT AND NOTE 3--1891 Act s 2(2) repealed: 1999 Act Sch 18 para 6, Sch 20 Pt V(4).

TEXT AND NOTE 7--1891 Act s 18(2) repealed: 1999 Act Sch 18 para 6, Sch 20 Pt V(4).

TEXT AND NOTE 8--For 'recognised stock exchange' read 'recognised investment exchange or recognised clearing house': Finance Act 1970 s 33(1), (2), (4), (5) (amended by SI 2001/3629). These expressions have the meanings given by the Financial Services and Markets Act 2000 s 285(1) (see FINANCIAL SERVICES AND INSTITUTIONS

vol 49 (2008) PARA 684): Finance Act 1970 s 33(7) (added by SI 2001/3629). Definition of 'recognised stock exchange' repealed: Finance Act 1970 s 33(1) (amended by SI 2001/3629).

NOTE 9--1891 Act Sch 1 replaced by Finance Act 1999 Sch 13 Pt 1 (paras 1-9): Sch 14 para 4. These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122, Sch 20 Pt V(2).

TEXT AND NOTES 11, 12--Finance Act 1976 Sch 15 Pt VI (in so far as it amends Finance Act 1970 s 33(1)) repealed by Finance Act 1999 Sch 20 Pt V(2), except in relation to instruments relating to units under unit trusts. Finance Act 1986 s 83 repealed: SI 2001/3629.

TEXT AND NOTE 13--1891 Act ss 3, 4, 12 repealed: Finance Act 1999 Sch 18 para 6, Sch 20 Pt V(4).

## (ii) Stamps Wasted or Inadvertently Misused

### 1107. Allowance for wasted stamps.

The Commissioners of Inland Revenue must make allowance for certain stamps[1] spoiled inadvertently or unused[2]. The time limit for applying for allowance is two years from the date of the instrument[3] or from the date of execution[4] if it is undated[5]. If an instrument was sent abroad for execution or, being an instrument for which another was substituted, cannot be produced within the two years through unavoidable circumstances, the commissioners may prescribe another time-limit[6]. The instrument must be given up for cancellation, and no legal proceedings must have commenced in which the instrument could or would have been used in evidence[7]. The above provisions are subject to such regulations as the commissioners may think proper to make and to the production of such evidence by statutory declaration or otherwise as they may require[8].

The normal procedure is by application in person, or by an agent authorised in writing and familiar with the circumstances, at one of the stamp offices or by post to the Stamp Office[9]. It seems that no appeal lies from the commissioners' decision[10].

There are further provisions for the repayment of duty in respect of agreements for sale and conveyances in contemplation of sale which have been charged with ad valorem duty where the property is not subsequently transferred or sold to the purchaser[11].

1 For the meaning of 'stamp' see PARA 1106 note 4 ante. See also PARA 1022 ante. The stamps still in use to which this provision may apply are stamps on instruments executed by any party which are found to have been void from the beginning (see the Stamp Duties Management Act 1891 s 9(7)(a)), or which are rendered unfit for their purpose by error or omission (see s 9(7)(b)), or by the failure of some necessary party to sign or complete (see s 9(7)(c)), or by the refusal of some person to act under it or by want of enrolment or registration (see s 9(7)(d)), or by the effecting of the intended transaction by some other duly stamped instrument or which have been spoiled and replaced by duly stamped instruments (see s 9(7)(e)).

2 Ibid s 9(1). As to allowances on lost and spoilt documents see PARA 1109 post.

3 See PARA 1108 note 3 post. For the meaning of 'instrument' see PARA 1001 ante.

4 For the meaning of 'execution' see PARA 1007 note 3 ante.

5 Stamp Duties Management Act 1891 s 9 proviso (a) (amended by the Revenue Act 1898 s 13).

6 Stamp Duties Management Act 1891 s 9 proviso (a).

7 Ibid s 9 proviso (b).

8 Ibid s 9. As to the persons before whom statutory declarations may be made see PARA 1110 post.

9 As to stamp offices see PARA 1106 note 15 ante. As to the manner in which the allowance is made see PARA 1109 post.

10 In Ireland an action was entertained for a declaration that an application for an allowance was brought within the proper time limit: see *Byrne v Revenue Comrs*[1935] IR 664. As to declaratory judgments generally see CIVIL PROCEDURE vol 12 (2009) PARA 1145.

11 See the Stamp Act 1891 s 59(6) (agreements for the sale of certain property); and PARA 1041 ante; the Finance Act 1965 s 90(2), (5) (conveyance in contemplation of sale); and PARAS 1048-1049 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

358 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

359 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the

transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

360 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1107 Allowance for wasted stamps**

NOTE 1--1891 Act s 9(7)(e) amended: Finance Act 1996 Sch 41 Pt VIII(4).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(6) ADMINISTRATION AND ASSESSMENT/(ii) Stamps Wasted or Inadvertently Misused/1108. Allowance for misused stamps.

**1108. Allowance for misused stamps.**

When any person has inadvertently used for an instrument[1] liable to stamp duty a stamp[2] of greater value than was necessary, or has inadvertently used a stamp for an instrument not liable to any duty, the Commissioners of Inland Revenue, on application made within two years after the date of the instrument or, if it is not dated, within two years after its execution[3] by the person by whom it was first or alone executed, and upon the instrument, if liable to duty, being stamped with the proper duty, may cancel and allow as spoiled the stamp so misused[4].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 For the meaning of 'stamp' see PARA 1106 note 4 ante. See also PARA 1022 ante.

3 For the meaning of 'execution' see PARA 1007 note 5 ante.

4 Stamp Duties Management Act 1891 s 10 (amended by the Revenue Act 1898 s 13). As to the manner in which an allowance is made see PARA 1109 post.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

361 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

362 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

363 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1109. Manner of making allowance.**

Where allowance is made for spoiled or misused stamps[1], the Commissioners of Inland Revenue may give in lieu thereof stamps of the same value, or, in their discretion, the same value in money[2].

By extra-statutory concession, allowance of the stamp duty on lost documents is made either by repayment, where replicas have been stamped, or by free stamping of the replicas[3]. Where the duty is allowed on a document because it has been spoilt or lost or replaced by a replica, but the duty has been increased so that the amount to be impressed on the replica is more than that allowable on the original, the additional duty is impressed free of charge[4].

1 For the meaning of 'stamp' see PARA 1106 note 4 ante. As to the allowance see PARAS 1107-1108 ante.

2 Stamp Duties Management Act 1891 s 11. There must be deducted the discount allowed on the purchase of stamps of the like description: s 11.

3 Inland Revenue booklet IR 1 (1992) G1.

4 Inland Revenue booklet IR 1 (1992) G2.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

364 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the

consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

365 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

366 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1109 Manner of making allowance

TEXT AND NOTES--Money payments made under these provisions now carry interest from (1) the date on which the duty was paid for the stamp in respect of which the allowance is made or (2) the date on which the duty or penalty was paid, as the case may be: Finance Act 1999 s 110(4), (5) (see PARA 1020A).

NOTE 2--The reference to deduction is removed: 1891 Act s 11 (amended by Finance Act 1999 Sch 18 para 6, Sch 20 Pt V(4)).

NOTES 3, 4--See now Stamp Duties Management Act 1891 s 9 (amended by Finance Act 1996, Schs 39, 41), s12A (added by Finance Act 1996 Sch 39 para 10), enacting Extra-Statutory Concessions G1 and G2. Reference to a fine removed: 1891 Act s 12A (amended by Finance Act 1999 Sch 17 para 2).

## (iii) Affidavits, Oaths and Statutory Declarations

### 1110. In general.

Any affidavit, oath or statutory declaration to be made for the purposes of any Act relating to stamp duties may be made before any of the Commissioners of Inland Revenue or any Inland Revenue officer or person authorised by them in that behalf, any commissioner for oaths or any solicitor empowered to administer oaths[1], any justice of the peace[2] or notary public[3] in the United Kingdom[4], or at any place outside the United Kingdom before any person duly authorised[5] to administer oaths there[6].

1 As to commissioners for oaths and solicitors see CIVIL PROCEDURE vol 11 (2009) PARA 1026. A solicitor administering an oath for this purpose must hold a practising certificate: Solicitors Act 1974 s 81(1).

2 As to justices see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

3 As to notaries public see LEGAL PROFESSIONS vol 66 (2009) PARA 1412 et seq.

4 As to the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

5 As to persons so authorised see CIVIL PROCEDURE vol 11 (2009) PARA 1027.

6 Stamp Duties Management Act 1891 s 24; Revenue Act 1898 s 7(6); Solicitors Act 1974 s 81(1).

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

367 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership

property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

368 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

369 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning

given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1110 In general**

NOTE 1--Solicitors Act 1974 s 81 repealed: Legal Services Act 2007 Sch 16 para 73, Sch 23.

## (iv) Assessment of Duty

### 1111. Adjudication.

Subject to such regulations as the Commissioners of Inland Revenue may make[1], and on furnishing the required evidence[2], any person may require the commissioners to express their opinion whether any executed[3] instrument[4] is chargeable with any stamp duty[5] and with what amount of duty it is chargeable[6].

Instruments requiring adjudication are not deemed to be duly stamped unless the commissioners have so expressed their opinion; and adjudication is obligatory in the case of voluntary dispositions (unless certified)[7], instruments by which property is conveyed or transferred in contemplation of a sale[8], orders made under the Variation of Trusts Act 1958[9] and certain conveyances in consideration of debt[10]; in connection with relief from duty afforded to conveyances and leases between associated bodies corporate[11]; where relief from duty is sought for company acquisitions[12]; in connection with the exemptions for conveyances, transfers and leases to charities[13]; for the exemption of certain instruments relating to maintenance funds for historic buildings[14]; and for the exemption in relation to instruments varying dispositions after death and appropriations by personal representatives (unless certified)[15].

An instrument on which the commissioners have expressed their opinion may not, if unstamped or insufficiently stamped, be stamped otherwise than in accordance with their assessment[16], but if so stamped, or adjudged not to be liable to any stamp duty, it may be stamped with an adjudication stamp as duly stamped[17] or as not chargeable[18]. Notwithstanding any objection relating to duty, an instrument so stamped is admissible in evidence and available for all purposes[19] except where it requires a 'particulars produced' stamp and has not been also so stamped[20] or where the commissioners have exceeded their powers[21], but an objection once upheld cannot be questioned on appeal by obtaining an adjudication stamp after the trial[22].

1 There are no formal regulations, but an Inland Revenue Notice has been published which sets out the commissioners' requirements and practice. Copies are available from offices of the Controller of Stamps: see PARA 1106 note 15 ante.

2 The commissioners may require an abstract of the instrument and evidence to show whether all the facts and circumstances affecting liability to or the amount of stamp duty are fully set forth in the instrument: Stamp Act 1891 s 12(2). Adjudication cannot be insisted on if reasonable requests for information are rejected: *R v IRC, ex p Evill* [1951] WN 502, [1951] 2 TLR 857, DC. A statutory declaration made for the purposes of the Stamp Act 1891 s 12 (as amended) may not be used against any person making it in any proceeding whatever, except in an inquiry as to the duty chargeable on the instrument, and every such person is, on payment of the duty chargeable, relieved from any fine or disability to which he may be liable by reason of the omission to state truly in the instrument any fact or circumstance required to be stated in it: s 12(6)(c). As to the fine incurred on omission to set out in an instrument facts and circumstances affecting liability to duty see PARA 1007 ante.

3 For the meaning of 'executed' see PARA 1007 note 5 ante.

4 For the meaning of 'instrument' see PARA 1001 ante.

5 Stamp Act 1891 s 12(1)(a).

6 Ibid s 12(1)(b). Although s 12 (as amended) does not authorise the stamping after execution of any instrument which by law cannot be stamped after execution (s 12(6)(b) (amended by the Finance Act 1971 s 69(7), Sch 14 Pt VI), there are, at present, no such instruments.

7 See the Finance Act 1985 s 82(5), (7); and PARAS 1007, 1077 ante. As to certification see PARA 1083 ante.

8 See the Finance Act 1965 s 90(3); and PARA 1048 ante.

9 See *Practice Note*[1966] 1 All ER 672, [1966] 1 WLR 345.

10 See the Finance Act 1980 s 102; and PARA 1046 ante.

11 See the Finance Act 1930 s 42(1); the Finance Act 1995 s 151(5); and PARA 1093 ante.

12 See the Finance Act 1986 ss 75-77; and PARAS 1091-1092, 1097 ante.

13 See the Finance Act 1982 s 129(2); and PARA 1093 ante.

14 See the Finance Act 1980 s 98(2); and PARA 1085 ante.

15 See the Finance Act 1985 s 84(9); and PARA 1089 ante. As to certification see PARA 1083 ante.

16 Stamp Act 1891 s 12(6)(a).

17 Ibid s 12(4).

18 Ibid s 12(3).

19 Ibid s 12(5). As to the unavailability and inadmissibility in evidence of documents not duly stamped see PARA 1007 ante.

20 See the Finance Act 1931 s 28(4); and PARA 1026 ante.

21 The commissioners may exceed their powers by stamping as duly stamped an instrument on which they have no power to adjudicate (*Morgan v Pike* (1854) 14 CB 473 at 483, per Jervis CJ) or which has been stamped after execution contrary to a statutory provision (*Vallance v Forbes* (1879) 6 R 1099; *Lamberton v Aiken* (1899) 2 F 189; and see *Roderick v Hovil* (1811) 3 Camp 103; *The Belfort* (1884) 9 PD 215, DC).

22 See *Prudential Mutual Assurance Investment and Loan Association v Curzon*(1852) 8 Exch 97. As to appeals see PARA 1112 post.

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

370 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

371 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

372 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1111 Adjudication**

TEXT AND NOTES--Stamp Act 1891 s 12 replaced by ss 12, 12A (substituted by Finance Act 1999 Sch 12 para 1). Subject to such regulations as the Commissioners for Her Majesty's Revenue and Customs may think fit to make, they may be required by any person to adjudicate with reference to any executed instrument on the questions (1) whether it is chargeable with duty; (2) with what amount of duty it is chargeable; (3) whether any penalty (see PARA 1020) is payable; (4) what penalty is in their opinion correct and appropriate: Stamp Act 1891 s 12(1).

The Commissioners may require to be furnished with an abstract of the instrument and with such evidence as they may require as to the facts and circumstance relevant to those questions; and must give notice of their decision to the person by whom the adjudication was required: s 12(2), (3). If they decide that the instrument is not chargeable with any duty, it may be stamped with a particular stamp denoting that it has been the subject of adjudication and is not chargeable with any duty; and if they decide that it is so chargeable and assess the amount of duty so chargeable, the instrument when stamped in accordance with that decision may be stamped with a particular stamp denoting that it has been the subject of adjudication and is duly stamped: s 12(4), (5). Every instrument so stamped is admissible in evidence and available for all purposes notwithstanding any objection relating to duty: s 12(6).

An instrument so adjudicated must not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with that adjudication; and if without reasonable excuse any such instrument is not duly stamped within 30 days after the date on which the Commissioners gave notice of their decision, or such longer period as they may allow, the person by whom the adjudication was required is liable to a penalty not exceeding £300: s 12A(1), (2). A statutory declaration made for the purposes of s 12 must not be used against the person making it in any proceedings whatever, except in an inquiry as to the duty with which the instrument to which it relates is chargeable or as to the penalty payable on stamping that instrument; and any such person must, on payment of the duty chargeable on the instrument to which the declaration relates, and any interest or penalty payable on stamping, be relieved from any penalty to which he may be liable by reason of the omission to state truly in the instrument any fact or circumstance required by the Stamp Act 1891 to be so stated: s 12A(3), (4).

## (v) Appeal against Assessment

### 1112. Appeals.

Upon payment of the stamp duty in conformity with an assessment of the Commissioners of Inland Revenue[1], a person dissatisfied with the assessment may appeal to the High Court within 21 days of the date of the assessment[2]. The appeal is by means of a case stated by the commissioners at the request of the person dissatisfied[3]. In practice, the case is submitted to the appellant in draft form for comment before it is signed. It is open to the parties to an appeal to refer questions concerning the value of land to the Lands Tribunal for determination by consent[4]. Oral evidence is admissible to supplement the case stated[5].

On the hearing of the case the court must determine the question submitted and assess the duty, if any, chargeable[6], and, if necessary, order repayment to the appellant of any excess of duty paid by him, together with any fine or penalty[7]. The court may order the excess to be repaid with such interest as it may determine[8]. It seems that the appropriate order is for simple interest at the bank rate current from time to time since the overpayment[9]. In default of agreement as to the bank rate, interest is calculated at the average rate of the clearing banks' base rates[10]. The order is a judgment and carries interest until payment in the usual way[11]. The Revenue may not sue to recover the excess of any higher duty the court may determine; in such circumstances the instrument is simply not duly stamped unless the excess is paid. The unsuccessful party will usually be ordered to pay the costs of the appeal[12]. An appeal from the decision of the High Court lies to the Court of Appeal and, with leave, from that court to the House of Lords[13].

1 As to the assessment see PARA 1111 ante.

2 Stamp Act 1891 s 13(1). The appeal is instituted by letter to the Stamp Office.

3 Ibid s 13(1). The case must set forth the question upon which the opinion of the commissioners was required and the assessment made by them: s 13(1). The commissioners need not strictly set out in the case the reasons for their assessment (see *EC (Holdings) Ltd v IRC* (1959) 38 ATC 73 at 74, where Roxburgh J expressed the view that it would have been more convenient for the court as well as the appellant if the commissioners had in fact put their reasons in the stated case and not merely in correspondence between the parties); but it is their practice to do so. Instruments attached to a case stated must themselves be properly stamped. The case must be set down for hearing in the Chancery Division of the High Court within seven days after it is delivered by the commissioners to the person requiring it: Stamp Act 1891 s 13(2); RSC Ord 91 r 1. Not less than ten days before the hearing of the appeal, either party must notify the other of any point which he intends to take at the hearing which may take the other by surprise, and leave at Chancery Chambers two copies of the notice for the court's use: Ord 91 r 4. The case is heard by a single Chancery judge: Ord 91 r 1(a).

4 Lands Tribunal Act 1949 s 1(5).

5 See *Speyer Bros v IRC*[1906] 1 KB 318.

6 Stamp Act 1891 s 13(3). It is not competent for the court to consider the commissioners' determination on points other than that which is the subject of the appeal: *Maxwell v IRC* (1866) 4 Macph 1121.

7 Stamp Act 1891 s 13(4) (amended by the Administration of Justice (Miscellaneous Provisions) Act 1933 s 10(3), Sch 3).

8 Finance Act 1965 s 91.

9 *Crane Fruehauf Ltd v IRC*[1974] 1 All ER 811 at 823; affd [1975] 1 All ER 429, CA. Interest cannot be awarded under the Law Reform (Miscellaneous Provisions) Act 1934: *Western United Investment Co Ltd v IRC*[1958] Ch 392, [1958] 1 All ER 257.

10 See *Prudential Assurance Co Ltd v IRC* as reported in [1992] STC 863 at 872.

11 See the Judgments Act 1838 s 17 (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1149.

12 See the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7 (as amended); and CROWN PROCEEDINGS AND CROWN PRACTICE. It seems that the costs of preparing the case may be included in the costs allowed on taxation: cf *Manchester Corpn v Sugden, Gresham Life Assurance Society v Bishop*[1903] 2 KB 171, CA.

13 See CIVIL PROCEDURE vol 12 (2009) PARA 1702 et seq.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

373 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

374 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the

stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

375 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see para 1095), 10 (see paras 1027, 1077-1079, 1081), 12 (see para 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see para 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1112 Appeals

TEXT AND NOTES--Stamp Act 1891 s 13 replaced by ss 13-13B (substituted by Finance Act 1999 Sch 12 para 2). A person who is dissatisfied with a decision of the Commissioners for Her Majesty's Revenue and Customs on an adjudication under the Stamp Act 1891 s 12 (see para 1111) may appeal against it within 30 days of notice of the decision on the adjudication being given, to the High Court of the part of the United Kingdom in which the case has arisen: s 13(1), (2), (5). An appeal may only be brought on payment of duty and any penalty (see para 1020) in conformity with the commissioners' decision and any interest (see para 1020) that, in conformity with that decision, would be payable on stamping the instrument on the day on which the appeal is brought: s 13(3).

Notice of an appeal which relates only to the penalty payable on late stamping (see para 1020) must be given in writing to the Commissioners for Her Majesty's Revenue

and Customs, specifying the grounds of appeal: s 13A(1), (2). On the appeal, the First-tier tribunal may, if it appears that no penalty should be paid, set the decision aside or, if the amount determined appears to be appropriate, confirm the decision: s 13A(5)(a), (b) (amended by SI 2009/56). The tribunal may also reduce or increase the amount as it considers appropriate: Stamp Act 1891 s 13A(5)(c), (d) (amended by SI 2009/56). In addition to any right of appeal on a point of law under the Tribunals, Courts and Enforcement Act 2007 s 11(2) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7), the person liable to the penalty may appeal to the Upper Tribunal against the amount of the penalty which has been determined under the Stamp Act 1891 s 13A(5), but not against any decision which falls under the Tribunals, Courts and Enforcement Act 2007 s 11(5)(d) or (e) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7) and was made in connection with the determination of the amount of the penalty: Stamp Act 1891 s 13A(7) (s 13A(7), (7A) substituted by SI 2009/56). The Tribunals, Courts and Enforcement Act 2007 s 11(3), (4) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7) applies to the right of appeal under these provisions as it applies to the right of appeal under s 11(2) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7): Stamp Act 1891 s 13A(7A). 'Tribunal' means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal: s 122(1) (amended by SI 2009/56).

The Lord Chancellor's function under the Stamp Act 1891 s 13A is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 3--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE. CPR Sch 1 RSC Ord 91 revoked: SI 2003/2113.

TEXT AND NOTE 4--Reference to Lands Tribunal is now to the Upper Tribunal: Lands Tribunal Act 1949 s 1(5) (amended by SI 2009/1307).

TEXT AND NOTES 6-8--Finance Act 1965 s 91 repealed, except in relation to instruments relating to units under unit trusts (see PARA 1121A): Finance Act 1999 Sch 20 Pt V(1).

## (7) OFFENCES

### 1113. Offences in respect of stamps.

It is an offence (1) to practise or be concerned in any fraudulent act, contrivance or device with intent to defraud Her Majesty of any stamp duty[1]; and (2) to make false Inland Revenue stamps[2], to copy them[3] or to use them[4] or copies of them[5]. There are powers of search and forfeiture in connection with such stamps[6]. There are also a number of offences which relate to adhesive stamps[7] but such stamps are no longer in use[8].

Fraudulent use, mutilation, removal or alteration of stamps or dies, and the sale or possession of fraudulently printed, impressed, mutilated or altered stamps, is an offence[9].

Where it is suspected that stamps have been stolen or fraudulently obtained, a justice of the peace may by warrant authorise their seizure and the apprehension of any person in whose possession or control they are found[10]. If that person does not satisfactorily account for the stamps they will be forfeited and delivered to the Commissioners of Inland Revenue[11].

The fines incurred for contraventions of the legislation relating to stamp duty are distinct from the penalties, normally related to the amount of duty payable, which are imposed for failure to stamp instruments within a certain time after their execution[12].

1 Stamp Duties Management Act 1891 s 21. The penalty is a fine of £50: s 21. As to the recovery of fines see PARA 1117 post.

2 See the Forgery and Counterfeiting Act 1981 ss 1, 8(1)(b), (c), (4); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 346, 347. An offender is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or to both (s 6(1)); or, on conviction on indictment, to imprisonment for a term not exceeding ten years (s 6(2), (3)); or a fine (Powers of Criminal Courts Act 1973 s 30(1) (amended by the Criminal Law Act 1977 s 65(5), Sch 13; the Criminal Justice Act 1991 s 101(2), Sch 13)). The statutory maximum is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended) and, as from 1 October 1992, is £5,000: s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)).

3 See the Forgery and Counterfeiting Act 1981 s 2; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 348. As to the penalty for such an offence see note 2 supra.

4 See ibid s 3; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 349. As to the penalty for such an offence see note 2 supra.

5 See ibid s 4; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 350. As to the penalty for such an offence see note 2 supra.

6 See ibid s 7; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 352. If forged stamps are found in the possession of a person appointed to sell and distribute stamps or licensed to deal in them, he is presumed until the contrary is shown to have them in his possession knowing them to be forged: see the Stamp Duties Management Act 1891 s 18(1). If the Commissioners of Inland Revenue suspect any such person of having forged stamps in his possession they may by warrant authorise a search of his premises and the seizure of stamps: see s 18(2), (3). As to giving a receipt for seized stamps and permitting their marking before removal see s 19; and note 10 infra. Refusal to permit a search or seizure, or obstruction of the search, renders a person liable to incur a fine of £50: see s 18(4).

7 See ibid ss 4, 6, 20.

8 See PARA 1022 ante.

9 See the Stamp Duties Management Act 1891 s 13(3)-(9) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 354. The offence, which is a criminal offence, is triable either way (Magistrates' Courts Act 1980 s 17(1), Sch 1 para 12), and is punishable on indictment by imprisonment for a term not exceeding 14 years, or on summary conviction by imprisonment for a term not exceeding six months or a fine not exceeding the prescribed sum (Stamp Duties Management Act 1891 s 13 (amended by the Forgery Act 1913 s 20, Schedule); Magistrates' Courts Act 1980 s 32(1)). On information given before a justice upon oath that there is just cause to suspect any person of being guilty of any such offence, the justice may, by a warrant under his hand, cause every house, room, shop, building or place belonging to or occupied by the suspected person, or where he is suspected of being or having been in any way engaged or concerned in the commission of any such offence, or of secreting any machinery, implements or utensils applicable to the commission of any such offence, to be searched; and if upon such search any of those matters and things are found, they may be seized and carried away, and must be delivered to the commissioners: Stamp Duties Management Act 1891 s 16. The prescribed sum is the sum prescribed for the purposes of the Magistrates' Courts Act 1980 s 32 (as amended); at the date at which this volume states the law, that sum is £5,000: s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)(c)).

10 Stamp Duties Management Act 1891 s 17(1). Where stamps are seized under a warrant, the person authorised by the warrant must, if required, give to the person in whose custody or possession the stamps are found an acknowledgment of the number, particulars and amount of the stamps, and permit the stamps to be marked before their removal: s 19.

11 See ibid s 17(2). Within six months a lawful owner may claim them: see s 17(3).

12 See eg the Stamp Act 1891 s 15(2)(c), which imposes both a fine and a penalty; and PARA 1020 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

376 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

377 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch

15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

378 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1113 Offences in respect of stamps

TEXT AND NOTES--Statements made or documents produced by or on behalf of a person are not inadmissible in (1) any criminal proceedings against him for any form of fraudulent conduct in connection with or in relation to stamp duty; (2) any proceedings against him for the recovery of any stamp duty or interest thereon from him; or (3) any

proceedings for a penalty, or on appeal against the determination of a penalty, in connection with or in relation to stamp duty, by reason only that it has been drawn to the person's attention that where serious stamp duty fraud has been committed, the Commissioners for Her Majesty's Revenue and Customs may accept a money settlement and that they will accept such a settlement, and will not pursue a criminal prosecution, if he makes a full confession of all stamp duty irregularities; or (b) that the extent to which he is helpful and volunteers information is a factor that will be taken into account in determining the amount of any penalty: Finance Act 1999 Sch 18 para 3(1) (amended by Finance Act 2003 s 206(2); and by virtue of Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). This amended provision ensures that where the standard non-statutory procedure (known as 'the *Hansard* procedure') is followed in recovery cases, any evidence obtained is admissible: see *R v Gill*[2003] EWCA Crim 2256, [2003] 4 All ER 681.

TEXT AND NOTES 1-8--The sanction is now a penalty of up to £3,000: Stamp Duties Management Act 1891 s 21 (amended by Finance Act 1999 Sch 17 para 2(3)). A similar penalty applies to offences relating to adhesive stamps: Stamp Duties Management Act 1891 s 9(1) (amended by Finance Act 1999 Sch 17 para 3(3)). Stamp Duties Management Act 1891 ss 4, 6, 18, 20 repealed: Finance Act 1999 Sch 18 para 6, Sch 20 Pt V(4).

NOTE 2--1973 Act s 30(1), consolidated in Powers of Criminal Courts (Sentencing) Act 2000 s 127, repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

NOTE 9--Stamp Duties Management Act 1891 s 13 further amended: Finance Act 1999 Sch 18 para 5, Sch 20 Pt V(3). A person guilty of an offence under the Stamp Duties Management Act 1891 s 13 is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both; and on conviction on indictment to imprisonment for a term not exceeding ten years or a fine, or both: s 13(2) (added by Finance Act 1999 Sch 18 para 5(5)).

TEXT AND NOTES 10, 11--Stamp Duties Management Act 1891 ss 17, 19 repealed: Finance Act 1999 Sch 18 para 6, Sch 20 Pt V(4).

**1114. Offences in respect of particular instruments.**

A person who executes or prepares any instrument[1] which does not set forth all the facts affecting its liability to stamp duty, and does so with intent to defraud Her Majesty, incurs a fine of £10[2]. A failure to stamp an instrument within the statutory time limit may also attract a fine of £10 in addition to the penalties which are incurred for late stamping[3].

A person who in the United Kingdom[4] assigns, transfers or negotiates any foreign security or Commonwealth government security[5] which is not duly stamped incurs a fine of £20[6].

Fines are incurred on failure to deliver accounts or to pay duty in connection with a composition agreement[7].

1 For the meaning of 'instrument' see PARA 1001 ante.

2 See the Stamp Act 1891 s 5; and PARA 1007 ante. As to the recovery of fines see PARA 1117 post.

3 See the Stamp Act 1891 s 15(2)(c); and PARA 1020 ante.

4 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

5 For the meaning of 'foreign security' and 'Commonwealth government security' for the purposes of a former charge see the Stamp Act 1891 s 82(1)(b), (c) (repealed).

6 Stamp Act 1891 s 83 (amended by the Finance Act 1963 s 62(4); and by the Finance Act 1973 s 59(7), Sch 22 Pt V). The Stamp Act 1891 s 83 (as so amended) is prospectively repealed by the Finance Act 1990 ss 109(1), 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

7 See the Finance Act 1970 s 33(5); and PARA 1106 ante.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

379 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

380 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

381 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1114 Offences in respect of particular instruments**

TEXT AND NOTES 1, 2--The sanction is now a penalty not exceeding £3,000: Stamp Act 1891 s 5 (amended by Finance Act 1999 Sch 17 para 3(2)).

TEXT AND NOTES 4-6--The sanction is now a penalty not exceeding £300: Stamp Act 1891 s 83 (amended by Finance Act 1999 Sch 17 para 3(6)).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(7) OFFENCES/1115. Prohibition of circulation of blank transfers.

**1115. Prohibition of circulation of blank transfers.**

When a transfer[1] in blank[2] relating to registered stock[3] of any description has been delivered pursuant to a sale of that stock, to or to the order of the purchaser[4] or any person acting on his behalf, any person who in Great Britain[5] parts with possession of that transfer, or who removes it or causes or permits it to be removed from Great Britain, before it has been duly completed[6] is liable to a fine not exceeding the aggregate of £50 and an amount equal to twice the stamp duty chargeable in respect of that transfer[7].

1 'Transfer' includes any instrument used for transferring stock: Finance Act 1963 s 67(4).

2 'Transfer in blank' means a transfer in which the transferee's name has not been inserted: ibid s 67(2). Nothing in s 67 (as amended) applies (1) to any instrument chargeable under the Stamp Act 1891 s 1, Sch 1, 'Bearer instrument' para (3) (as added and amended) (see PARA 1066 ante); or (2) to any instrument exempt from duty by virtue of Sch 1, 'Bearer instrument', Exemption 3 (as added) (see PARA 1098 ante): Finance Act 1963 s 67(4)(a), (b).

3 'Stock' includes securities, and references to stock include references to any interest in, or in any fraction of, stock or in any dividends or other rights arising out of stock and any right to an allotment of or to subscribe for stock: ibid s 59(4) applied by s 67(4).

4 References in this provision to the purchaser or donee of any stock include references to any person to whom the rights of the purchaser or donee are transmitted by operation of law, and in relation to a transfer chargeable with duty in accordance with the Stamp Act 1891 s 58(4) or (5) (as amended) (see PARA 1039 ante), references in this provision to the purchaser and a sale are to be construed as references to the sub-purchaser and a sub-sale: Finance Act 1963 s 67(5) (amended by the Finance Act 1985 s 98(6), Sch 27 Pt IX).

5 For the meaning of 'Great Britain' see PARA 1007 note 6 ante.

6 A transfer is treated as duly completed if and only if, the transferee's name is inserted in it, being the name of (1) the purchaser of the stock under the sale; (2) a person entitled to a charge upon the stock for money lent to that purchaser; (3) a nominee holding as bare trustee for that purchaser or for any person mentioned in head (2) supra; or (4) a person acting as the agent of that purchaser for the purposes of the sale: Finance Act 1963 s 67(2)(a)-(d).

7 Ibid s 67(1). Section 67 is prospectively repealed by the Finance Act 1990 ss 109(3), 132, Sch 19 Pt VI as from the abolition day. For the meaning of 'the abolition day' see PARA 1004 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject

matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

382 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

383 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

384 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1115 Prohibition of circulation of blank transfers

TEXT AND NOTES--The sanction is now a penalty not exceeding £300 and an amount equal to twice the stamp duty chargeable: Finance Act 1963 s 67(1) (amended by Finance Act 1999 Sch 17 para 6). For the prospective repeal of Sch 17 para 6 from abolition day, see s 123(3); and PARAS 1004, 1005.

NOTES 1, 3--'Transfer' includes any instrument used for transferring stock, but nothing in these provisions applies to (1) an instrument which is chargeable with duty at the rate specified in the Finance Act 1999 Sch 15 para 5 (see PARA 1065) and is duly stamped, or (2) renounceable letters of allotment, letters of rights or other similar instruments where the rights thereunder are renounceable not later than six months after its issue: Finance Act 1963 s 67(4), (4A) (substituted by Finance Act 1999 Sch 16 para 2). For the prospective repeal of Sch 16 para 2 from abolition day, see s 123(3).

NOTE 3--Finance Act 1963 s 59(4) repealed: Finance Act 1999 Sch 20 Pt V(2).

**1116. Offences in respect of registers.**

Public officers (including trustees and managers of unit trust schemes[1]) who fail to permit inspection of their records for the purpose of detecting fraud or non-payment of stamp duty are liable to a fine of £10[2]. Regulations have been made[3] which require the trustees and managers of unit trust schemes to keep various records and registers and any failure to comply with these requirements attracts a fine of £10 in respect of each matter which ought to have been recorded[4].

Any person whose office it is to enrol, register or enter in any rolls, books or records any instrument[5] chargeable with stamp duty and who does so without the instrument being duly stamped incurs a fine of £10[6]. This provision, together with the enactment making unstamped instruments unavailable for any purpose[7], entitles a person whose office it is to register instruments to refuse to register an instrument if he is not satisfied that it is duly stamped. Accordingly the persons presenting the instrument for registration may, in effect, be required to present the instrument for adjudication in order to put the sufficiency of the stamp beyond dispute[8]. If the instrument is one which requires an adjudication stamp, registration may be refused[9]. The relevant officer is not bound by the statement in the instrument itself of the consideration paid[10].

There are provisions in relation to land registration directed to ensuring that stamp duty is paid[11]. A title which depends on registration would apparently not be adversely affected merely because registration was procured by the use of an unstamped or insufficiently stamped instrument[12].

1 See PARA 1007 note 23 ante. For the meaning of 'unit trust scheme' see PARA 1029 note 4 ante.

2 See PARA 1007 ante.

3 Ie under the Finance Act 1946 s 56(3): see PARA 1076 ante. Section 56(3) is prospectively repealed from a day to be appointed by statutory instrument: see the Finance Act 1990 ss 109(6)(a), 132, Sch 19 Pt VI; and PARA 1075 note 3 ante.

4 See the Unit Trust Records Regulations 1946, SR & O 1946/1586; and PARA 1076 ante. The regulations deal with the preservation of certificates and transfers (reg 3), the recording of units (reg 4), the register of holders of registered units (reg 5), the register of certificates to bearer (reg 6), loose-leaf records and the index of holders of units (reg 7), the opening statement of units (reg 8), the daily record of transactions (reg 9) and the period for which records must be preserved (reg 10). For the meaning of 'certificate to bearer' see PARA 1074 note 6 ante.

5 For the meaning of 'instrument' see PARA 1001 ante.

6 Stamp Act 1891 s 17: see PARA 1007 ante.

7 See ibid s 14(4); and PARA 1007 ante.

8 *R v Joint Stock Companies Registrar* (1888) 21 QBD 131, DC. As to adjudication see PARA 1111 ante.

9 *Conybear v British Briquettes Ltd* [1937] 4 All ER 191.

10 *Maynard v Consolidated Kent Collieries Corpn Ltd* [1903] 2 KB 121, CA; *Conybear v British Briquettes Ltd* [1937] 4 All ER 191. See also PARAS 1012, 1034 ante.

11 See the Land Registration Act 1925 s 14(3); and the Land Registration Rules 1925, SR & O 1925/1093, rr 94, 95.

12 See *Lap Shun Textiles Industrial Co Ltd v Collector of Stamp Revenue* [1976] AC 530, [1976] 1 All ER 833, PC. For earlier views, cf *Powell v London and Provincial Bank* [1893] 2 Ch 555 at 560, CA, but contrast *Re Indo-China Steam Navigation Co* [1917] 2 Ch 100 at 106.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

385 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

386 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net

market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

387 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

### 1116 Offences in respect of registers

TEXT AND NOTES 3, 4--The sanction is now a penalty of up to £300: Finance Act 1946 s 56(3) (amended by Finance Act 1999 Sch 17 para 4). Finance Act 1946 s 56 repealed: Finance Act 1999 Sch 20 Pt V(5).

TEXT AND NOTES 5, 6--The sanction is now a penalty of up to £300: Stamp Act 1891 s 17 (amended by Finance Act 1999 Sch 17 para 3(5)).

NOTE 11--Land Registration Act 1925 replaced by Land Registration Act 2002: see LAND REGISTRATION.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(7) OFFENCES/1117. Recovery of fines.

**1117. Recovery of fines.**

All fines under the Stamp Duties Management Act 1891[1] may be proceeded for and recovered in the same manner as a fine or penalty under any Act relating to excise[2], or by action in the High Court[3]. Although fines under the Stamp Act 1891[4] may be said to be the punishment for an offence[5], the liability is not criminal; a fine constitutes a debt due to the Crown recoverable by proceedings in the High Court[6]. Proceedings must be brought within two years of the commission of the offence[7]. The Commissioners of Inland Revenue have wide discretionary powers of mitigating any fine or penalty under any Act relating inter alia to stamp duties and of staying or compounding any proceedings for its recovery[8]. They or the Treasury may mitigate or remit any such fine or penalty either before or after judgment[9].

Since a fine is a debt due to the Crown, the liability not being criminal, the common law rules as to criminal liability are therefore inapplicable, so where an employee does an act in the course of his employment and within the scope of his authority, the act may become the act of his employer, who will be liable for any fine which the act may attract, for the employer's knowledge will be inferred[10].

1 See eg the Stamp Duties Management Act 1891 ss 6(1), 20, 21; and PARA 1113 ante.

2 Ibid s 26 (amended by the Pharmacy and Medicines Act 1941 s 14, Schedule; and by the Customs and Excise Act 1952 s 320, Sch 12 Pt I). As to excise proceedings see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1197 et seq.

3 Inland Revenue Regulation Act 1890 ss 22(1), 39 (amended by the Customs and Excise Act 1952 Sch 12 Pt I). It appears that, in general, proceedings to recover fines imposed under the Stamp Duties Management Act 1891 are not criminal proceedings, although s 6(4) indicates that proceedings under s 6(1) (penalty for hawking stamps; now obsolete) (see PARA 1113 ante) are criminal, and proceedings under s 13 (as amended) (see PARA 1113 ante) are clearly criminal.

4 See eg the Stamp Act 1891 ss 5, 16, 17 (see PARA 1007 ante), s 15(2)(c) (see PARA 1020 ante) and s 83 (see PARA 1114 ante).

5 *Lord Advocate v Thomson* (1897) 24 R 543 at 545. See also *A-G v Radloff* (1854) 10 Exch 84; *Huntington v Attrill* [1893] AC 150 at 156 et seq, PC; *A-G v Casey* [1930] IR 163.

6 Stamp Act 1891 s 121. Proceedings by information, provided for by s 121, have been abolished: see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 107. Consequently the Inland Revenue Regulation Act 1890 s 22(1) (as amended) (see the text and note 3 supra) will apply. As to the general principle that proceedings to recover fines of this nature are not criminal see *A-G v Bradlaugh* (1885) 14 QBD 667 at 687-688, CA, per Brett MR, and *IRC v Maple & Co (Paris) Ltd* (1907) as reported in 77 LJKB 55 at 59, HL, per Lord Macnaghten. However, it is clear from the wording of the Finance Act 1931 s 28(1) (as amended) (see PARA 1026 ante) that proceedings under that provision are criminal. Where proceedings to recover fines are not criminal, the general increases of summary fines under the Criminal Law Act 1977 s 31 (as amended); the Criminal Justice Act 1982 ss 37-48 (as amended); and the Criminal Justice Act 1991 s 17(3)(a), Sch 4 Pt I do not apply. See further CRIMINAL LAW, EVIDENCE AND PROCEDURE; MAGISTRATES.

7 Inland Revenue Regulation Act 1890 s 22(2) (amended by the Customs and Excise Act 1952 Sch 12 Pt I). See also note 3 supra.

8 Inland Revenue Regulation Act 1890 s 35(1) (amended by the Customs and Excise Act 1952 Sch 12 Pt I).

9 Inland Revenue Regulation Act 1890 s 35(1), (2) (amended by the Customs and Excise Act 1952 Sch 12 Pt I; and by the Income Tax Management Act 1964 s 17(5), Sch 6 Pt II (repealed)).

10 *A-G v Carlton Bank* [1899] 2 QB 158. See also *A-G v Siddon* (1830) 1 Cr & J 220 at 226 per Bayley B. However, the presumption of the employer's liability is apparently not so absolute as to prevent his proving

non-complicity: *R v Dean* (1843) 12 M & W 39. As to the circumstances in which a person may be liable for an offence by virtue of the act of his agent or employee see AGENCY vol 1 (2008) PARA 155; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 59 et seq.

**UPDATE**

**1001-1117 Stamp Duties**

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

388 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

389 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the

transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

390 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

**1117 Recovery of fines**

TEXT AND NOTES--The Finance Act 1999 Sch 17 largely replaces administrative fines by penalties. The following provisions are without prejudice to any criminal proceedings for an offence: Sch 17 para 9(2). A duly-authorised officer of Revenue and Customs may make (within six years after the date on which a penalty was incurred) a determination imposing any penalty (other than one imposed by the Stamp Act 1891 s 15B) (see PARA 1020) and setting it at such amount as in his opinion is correct or appropriate: Finance Act 1999 Sch 17 paras 10(1), 15 (amended by virtue of Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). Notice of his determination must be served on the person liable to the penalty and must state the date on which the notice is issued and the time within which an appeal against the determination may be made, and once such notice is issued the determination cannot be altered other than by agreement in writing or on appeal, unless a duly-authorised officer of officer of Revenue and Customs discovers that the penalty so determined is or has become insufficient, in which case he may make a determination in a further amount so that the penalty is set at the amount which in his opinion is correct or appropriate: Finance Act 1999 Sch 17 para 10(2)-(4) (amended by virtue of Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). A penalty determined under Sch 17 para 10 is due and payable at the end of the period of 30 days beginning with the date of the issue of the notice, and if the person liable to it has died, any determination which could have been made in relation to him may be made in relation

to his personal representatives, and any penalty imposed on them is a debt due from and payable out of the estate: Sch 17 para 10(5), (6).

Written notice of appeal must be given to the officer by whom the determination was made within 30 days of the date of the notice of determination (or such longer time as the Commissioners for Her Majesty's Revenue and Customs may allow): Sch 17 para 11(1), (2) (Sch 17 para 11(1) amended by SI 2009/56). The notice of appeal must specify the grounds of appeal and the First-tier Tribunal may uphold, set aside, reduce or increase the determination as it considers appropriate: Finance Act 1999 Sch 17 para 11(4), (6) (Sch 17 para 11(4) substituted, Sch 11 para 11(6) amended, by SI 2009/56). 'Tribunal' means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal: Finance Act 1999 Sch 17 para 9(3) (added by SI 2009/56). If no notice of appeal is given before the relevant time limit, late notice may be given if Her Majesty's Revenue and Customs agrees (or, if it does not, where the tribunal gives permission): Finance Act 1999 Sch 17 para 11A(1), (2) (Sch 17 para 11A added by SI 2009/56). Her Majesty's Revenue and Customs must agree to late notice if (1) the appellant has made a written request; (2) it is satisfied that there was reasonable excuse for not giving the notice before the relevant time limit; and (3) it is satisfied that the request was made without unreasonable delay after the reasonable excuse ceased: Finance Act 1999 Sch 17 para 11A(3)-(6). If a written request is made, Her Majesty's Revenue and Customs must notify the appellant whether or not it agrees to late notice: Sch 17 para 11A(7). 'Relevant time limit', in relation to a notice of appeal, means the time before which the notice is to be given (but for Sch 17 para 11A): Sch 17 para 11A(8).

The Taxes Management Act 1970 ss 49A-49I (see INCOME TAXATION vol 23(2) (Reissue) PARA 1750A) apply to appeals under these provisions, with appropriate modifications and with the omission of ss 49C(5), (6) and 49F(3), (4): Finance Act 1999 Sch 17 para 11(4) (Sch 17 para 11(4A)-(4F) added by SI 2009/56). References to 'the tribunal' are taken to be references to the First-tier Tribunal: Finance Act 1999 Sch 17 para 11(4F). In addition to any right of appeal on a point of law under the Tribunals, Courts and Enforcement Act 2007 s 11(2) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7), the person liable to the penalty may appeal to the Upper Tribunal against he amount of the penalty determined under the Finance Act 1999 Sch 17 para 11(6), but not against any decision which falls under the Tribunals, Courts and Enforcement Act 2007 s 11(5)(d) or (e) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7) and was made in connecton with the determination of the amount of the penalty); and s 11(3), (4) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7) applies to such an appeal as it applies to an appeal under s 11(2) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7): Finance Act 1999 Sch 17 para 12(2), (2A) (substituted by SI 2009/56). On such an appeal, the Upper Tribunal has the same powers as are conferred on the First-tier Tribunal by the Finance Act 1999 Sch 17 para 11(6): Sch 17 para 12(3) (amended by SI 2009/56). A further appeal lies, at the instance of the person liable to the penalty, to the High Court: Finance Act 1999 Sch 17 paras 12, 16, 17. See further Constitutional Reform Act 2005 s 19, Sch 7 para 4. For regulations made in exercise of the powers conferred on the Treasury by the Finance Act 1999 Sch 17 paras 16, 17, see the Stamp Duty (Collection and Recovery of Penalties) Regulations 1999, SI 1999/2537 (amended by SI 2009/56, SI 2009/1890). Where, in the opinion of the Commissioners for Her Majesty's Revenue and Customs, the liability of a person to a penalty arises by reason of his fraud or the fraud of another person, they may bring civil proceedings in the High Court, which may determine a penalty (to the exclusion of a duly authorised officer) even if fraud is not proven: Finance Act 1999 Sch 17 para 13.

The Commissioners may mitigate any penalty imposed under the provisions above, or stay or compound any proceedings for its recovery: Sch 17 para 14.

TEXT AND NOTES 1-9--Inland Revenue Regulation Act 1890 repealed: Commissioners for Revenue and Customs Act 2005 Sch 4 para 5, Sch 5.

TEXT AND NOTES 1-6--Stamp Duties Management Act 1891 ss 6, 20, 26 and Stamp Act 1891 s 121 repealed: Finance Act 1999 Sch 18 para 6, Sch 20 Pt V(3).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/1. STAMP DUTIES/(7) OFFENCES/1117A. Stamp duty land tax.

**1117A. Stamp duty land tax.**

**1. The charge to tax**

Stamp duty land tax is chargeable on a land transaction, ie any acquisition of a chargeable interest[1]. A land transaction is a chargeable transaction if it is not an exempt transaction, and the tax is levied on the chargeable consideration[2]. The tax applies however the acquisition is effected (whether by act of the parties, by order of a court or other authority, by or under any statutory provision[3], or by operation of law), and:

145 (1) whether or not there is any instrument affecting the transaction;
146 (2) if there is such an instrument, whether or not it is executed in the United Kingdom; and
147 (3) whether or not any party to the transaction is present, or resident, in the United Kingdom[4].

The tax is under the care and management of the Commissioners for Her Majesty's Revenue and Customs[5].

1 Finance Act 2003 ss 42(1), 43(1), (2). For the meaning of 'chargeable interest' and 'acquisition', see PARA 1117A.2.

2 Ibid s 49(1). For the meaning of 'chargeable consideration', see PARA 1117A.7 et seq. As to exempt transactions, see PARA 1117A.6.

3 Ie any provision made by or under an Act of Parliament, an Act of the Scottish Parliament or any Northern Ireland legislation: ibid s 121. Except as provided by Sch 15 paras 10, 14, 17 (see PARA 1117A.38), the acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land: Sch 15 para 29 (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

4 Finance Act 2003 ss 42(2), 43(2). For the meaning of 'resident' and 'United Kingdom', see INCOME TAXATION.

5 Ibid ss 42(3), 113(4) (amended by virtue of Commissioners for Revenue and Customs Act 2005 s 50). As to the Commissioners see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. Subject to transitional provisions, stamp duty land tax came into force on 1 December 2003: Finance Act 2003 s 124, Sch 19; Stamp Duty Land Tax (Appointment of the Implementation Date) Order 2003, SI 2003/2899.

**2. Chargeable interest**

'Chargeable interest' means an estate, interest, right or power in or over land[1] in the United Kingdom, or the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power, other than an exempt interest[2]. An 'exempt interest' is:

148 (1) any security interest[3];
149 (2) a licence to use or occupy land;
150 (3) a tenancy at will, an advowson, a franchise[4] or a manor[5].

For these purposes:

151 (a) the creation of a chargeable interest is an acquisition by the person becoming entitled to the interest created, and a disposal by the person whose interest or right is subject to the interest created;

152 (b) the surrender or release of a chargeable interest is an acquisition of that interest by any person whose interest or right is benefited or enlarged by the transaction, and a disposal by the person ceasing to be entitled to that interest and;

153 (c) the variation of a chargeable interest (other than a lease) is an acquisition of a chargeable interest by a person benefiting from the variation, and a disposal of a chargeable interest by the person whose interest is subject to or limited by the variation;

154 (d) the variation of a lease is an acquisition and disposal of a chargeable interest only where it takes effect, or is treated[6], as the grant of a new lease[7].

References in these provisions to the 'purchaser' and 'vendor', in relation to a land transaction, are to the person acquiring, and the person disposing of, the subject matter of the transaction[8].

1 'Land' includes buildings and structures and land covered by water: Finance Act 2003 s 121.

2 Ibid s 48(1).

3 'Security interest' means an interest or right (other than a rentcharge) held for the purpose of securing the payment of money or the performance of any other obligation: ibid s 48(3)(a).

4 'Franchise' means a grant from the Crown such as the right to hold a market or fair, or the right to take tolls: ibid s 48(3)(b).

5 Ibid s 48(2). Section 48 has effect subject to s 44A(3) (see PARA 1117A.3) and to Sch 17A para 15A (see PARA 1117A.7): s 48(7) (added by Finance Act 2004 Sch 39 para 4(2); and amended by s 297(3)).

The Treasury may by regulations provide that any other description of interest or right in relation to land in the United Kingdom is an exempt interest, and such regulations may contain such supplementary, incidental and transitional provision as appears to the Treasury to be appropriate: s 48(5), (6). Except as otherwise provided, any power of the Treasury or the Inland Revenue to make an order or regulations under these provisions, or under any other enactments relating to stamp duty land tax (including enactments passed after the Finance Act 2003), is exercisable by statutory instrument: s 114(1). Except as otherwise provided, such an instrument is subject to annulment in pursuance of a resolution of the House of Commons: s 114(3). Any power to make regulations which is vested in the Inland Revenue is exercisable only by the Board: s 113(2), (4). For the meaning of 'the Board', see PARA 1117A.1. For the meaning of 'United Kingdom', see INCOME TAXATION. See Stamp Duty Land Tax (Administration) Regulations 2003, SI 2003/2837 (amended by SI 2004/3124, SI 2005/1132, SI 2006/776, SI 2009/56).

The first set of regulations under the Finance Act 2003 s 58B (see PARA 1117A.15) may not be made unless a draft has been laid before and approved by resolution of the House of Commons: s 114(5) (added by Finance Act 2007 s 19(2)). An order or regulations under the Finance Act 2003 Pt 4 (ss 42-124) may (1) make provision having effect generally or only in specified cases or circumstances; (2) make different provision for different cases or circumstances; and (3) include incidental, consequential or transitional provision or savings: s 114(6). See Stamp Duty Land Tax (Zero-Carbon Homes Relief) Regulations 2007, SI 2007/3437 (amended by SI 2008/1932).

6 Ie treated for the purposes of the Finance Act 2003 Pt 4.

7 Ibid s 43(3) (amended by Finance Act 2004 Sch 39 para 2). Such a variation is also an acquisition or a disposal of a chargeable interest where Sch 17A para 15A (see PARA 1117A.7) applies: s 43(3).

8 Ibid s 43(4). These expressions apply even if there is no consideration for the transaction, but a person is not treated as a purchaser unless he has given consideration for, or is a party to, the transaction: s 43(4), (5). The 'subject matter' of a land transaction is the chargeable interest acquired ('the main subject matter'), together with any interest or right appurtenant or pertaining to it that is acquired with it: s 43(6). For the meaning of 'land transaction', see PARA 1117A.1 NOTE 1.

## 3. Contract and conveyance

Where a contract for a land transaction[1] is entered into under which the contract is to be completed by a conveyance[2], a person is not treated as entering into a land transaction by reason of entering into the contract, but:

155 (1) if the transaction is completed[3] without previously having been substantially performed[4], the contract and the transaction effected on completion are treated as part of a single land transaction, and the effective date of the transaction is the date of completion[5];
156 (2) if the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for therein, and the effective date of the transaction is the date when the contract is substantially performed[6].

Where a contract for a land transaction ('the original contract') is entered into under which the transaction is to be completed by a conveyance, and there is an assignment, sub-sale or other transaction (relating to the whole or part of the subject matter[7] of the original contract) (a 'transfer of rights') as a result of which a person other than the original purchaser[8] becomes entitled to call for a conveyance to him, then the transferee is not regarded as entering into a land transaction by reason of the transfer of rights[9]. Instead, the above provisions[10] apply as if there were a contract for a land transaction (a 'secondary contract') under which the transferee is the purchaser, and the consideration for which is:

157 (a) so much of the consideration under the original contract as is referable to the subject matter of the transfer of rights and is to be given (directly or indirectly) by the transferee or a person connected with him, and
158 (b) the consideration given for that transfer[11].

Where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract ('A') at the direction or request of the other ('B'):

159 (i) to a person ('C') who is not a party to the contract, or
160 (ii) either to such a person or to B,

B is not regarded as entering into a land transaction by reason of entering into the contract, but:

161 (A) if the contract is substantially performed, B is treated[12] as acquiring a chargeable interest, and accordingly as entering into a land transaction[13];
162 (B) where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of head (A) above must (to that extent) be repaid by the Inland Revenue[14].

Where, in the case of a contract ('the original contract') to which head (i) or (ii) above applies, there is an assignment or other transaction relation go the whole or part of the subject matter of the original contract as a result of which a person ('D') becomes entitled to exercise any of B's rights under the original contract in place of B, D is not regarded as entering into a land transaction by reason of the transfer of rights[15].

1 For the meaning of 'land transaction', see PARA 1117A.1 NOTE 1.

2 'Contract' includes any agreement, and 'conveyance' includes any instrument: Finance Act 2003 ss 44(10)(b), 45(7).

3 References to completion are to completion of the land transaction proposed between the same parties, in substantial conformity with the contract: ibid s 44(10)(a). For the meaning of 'lease', see PARA 1117A.4.

4 A contract is 'substantially performed' when the purchaser, or a person connected with the purchaser, takes possession of the whole, or substantially the whole, of the subject matter of the contract, or a substantial amount of the consideration is paid or provided: ibid s 44(5) (amended by the Finance Act 2004 Sch 39 para 15(2)). 'Possession' includes receipt of rents and profits or the right to receive them, and it is immaterial whether possession is taken under the contract or under a licence or lease of a temporary character: Finance Act 2003 s 44(6) (amended by the Finance Act 2004 Sch 39 para 15(3)). A substantial amount of the consideration is paid or provided (1) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided; (2) if the only consideration is rent, when the first payment of rent is made; (3) if the consideration includes both rent and other consideration, when the whole or substantially the whole of the consideration other than rent is paid or provided, or the first payment of rent is made: s 44(7). 'Connected' has the meaning given by the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258): Finance Act 2003 ss 44(11), 45(6), 53(2), 108(1), Sch 4 paras 10(4), 12(2), Sch 6A para 10 (s 44(11), Sch 6A added by SI 2003/2816). For the meaning of 'purchaser' and 'subject matter', see PARA 1117A.2.

5 Finance Act 2003 s 44(3). In all other cases, except where otherwise provided, the effective date of a land transaction is the date of completion, or such alternative date as the Commissioners for Her Majesty's Revenue and Customs may prescribe by regulations: s 119 (amended by Finance Act 2004 Sch 42 Pt 4(2); and Finance (No 2) Act 2005 s 47(3)).

6 Finance Act 2003 s 44(4). Where head (2) of the TEXT applies and the contract is subsequently completed by a conveyance, both the contract and the transaction effected on completion are notifiable transactions, and tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract: s 44(8). Where that head applies, and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of s 44(4) must (to that extent) be repaid by the Inland Revenue: s 44(9). Repayment must be claimed by amendment to the land transaction return made in respect of the contract: s 44(9). 'Inland Revenue' includes any officer of the Board: s 113(1). As to the Board, see PARA 1117A.1. As to notifiable transactions and the land transaction return, see PARA 1117A.25.

However, where Sch 17A para 12A (see PARA 1117A.8) or 19(3)-(6) applies, the application of s 44(4), (8), (9) is excluded: s 44(9A) (added by Finance Act 2004 Sch 39 para 3).

7 For the meaning of 'subject matter' see PARA 1117A.2.

8 For the meaning of 'purchaser' see PARA 1117A.2.

9 Finance Act 2003 s 45(1), (2). A similar rule operates where Sch 17A para 12B (see PARA 1117A.8) applies: s 45(1) (amended by Finance Act 2004 Sch 39 para 5(2)). For the meaning of 'purchaser' and 'subject matter', see PARA 1117A.2.

10 Ie ibid s 44.

11 Ibid s 45(3). The substantial performance or completion of the original contract at the same time as, and in connection with, the substantial performance or completion of the secondary contract, is disregarded: s 45(3) (amended by Finance (No 2) Act 2005 Sch 10 para 2). For the meaning of 'connected', see NOTE 4. Where there are successive transfers of rights, the Finance Act 2003 s 45(3) has effect in relation to each of them: s 45(4). The substantial performance or completion of the secondary contract arising from an earlier transfer of rights at the same time as, and in connection with, the substantial performance or completion of the secondary contract arising from a subsequent transfer of rights, is disregarded: s 45(4).

Where a transfer of rights relates to part only of the subject matter of the original contract ('the relevant part'), (1) s 44(8)(b) (see NOTE 6) has effect as if the reference to the amount of tax chargeable on that contract were a reference to an appropriate proportion of that amount; and (2) the reference in that part of s 45(3) cited to the original contract, or the reference in s 45(4) to the secondary contract arising from an earlier transfer of rights, is to that contract so far as relating to the relevant part (and that contract so far as not so relating is treated as a separate contract): s 45(5) (amended by the Finance Act 2004 Sch 39 para 5(3)). In relation to a land transaction treated as taking place by virtue of the Finance Act 2003 s 45(3), references in Sch 7 (see PARA 1117A.17) to the vendor are to be read as references to the vendor under the original contract, and other reference in Pt 4 (ss 42-124) to the vendor are to be read, where the context permits, as referring to either the vendor under the original contract or the transferor: s 45(5A) (added by Finance Act 2004 Sch 19 para 5(4)).

12 Ie for the purposes of ibid Pt 4 (ss 42-124).

13 Ibid s 44A(3) (s 44A added by Finance Act 2004 Sch 39 para 4(1)). The effective date of the transaction is when the contract is substantially performed: Finance Act 2003 s 44A(3).

14 Ibid s 44A(1), (2), (5). Repayment must be claimed by amendment of the land transaction return made in respect of the contract: s 44A(4). 'Contract' includes any agreement and 'conveyance' includes any instrument: s 44A(8). Section 44 applies in relation to any contract between B and C, in respect of the chargeable interest concerned, that is to be completed by a conveyance, and references to completion in s 44 (as it so applies) include reference to conveyance by A to C of the subject matter of the contact between B and C: s 44A(7).

Where s 44A applies by virtue of head (ii) of the TEXT and, by reason of B's direction or request, A becomes obliged to convey a chargeable interest to B, s 44 applies to that obligation as it applies to a contract for a land transaction that is to be completed by a conveyance: s 44A(6). Section 44 does not otherwise apply (except so far as it defines 'substantial performance') in relation to the contract: s 44A(5).

15 Ibid s 45A(1), (2) (s 45A added by Finance Act 2004 Sch 39 para 5(5)). Subsequent references in the Finance Act 2003 s 45A to a transfer of rights are to any such assignment or other transaction; and 'contract' includes any agreement: s 45A(1), (11).

In such a case, s 44A applies as if (1) D had entered into a contract (a 'secondary contract') in the same terms as the original contact, except with D as a party instead of B; and (2) the consideration due from D under the secondary contract were so much of the consideration under the original contract as is referable to the subject matter of the transfer of rights and is to be given (directly or indirectly ) by D or a person connected with him, and the consideration given for the transfer of rights: s 45A(2), (3). Where there are successive transfers of rights, these provisions have effect in relation to each of them: s 45A(5). The effective date of a land transaction treated as entered into by these provisions is not earlier than the date of the transfer of rights; and in relation to such a transaction, references in Sch 7 to the vendor are to be read as references to A, and other references in Pt 4 to the vendor are to be read, where the context permits, as referring to either A or B: s 45A(8), (9). The Income and Corporation Taxes Act 1988 s 839 (meaning of 'connected person') (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258) applies: Finance Act 2003 s 45A(10).

The substantial performance of the original contract is disregarded if it occurs at the same time as, and in connection with, the substantial performance of the secondary contract, or after the transfer of rights: s 45A(4). The substantial performance of the secondary contract arising from an earlier transfer of rights is disregarded if it occurs at the same time as, and in connection with, the substantial performance of the secondary contract arising from a subsequent transfer of rights, or after that subsequent transfer: s 45A(6).

Where a transfer of rights relates to only part of the subject matter of the original contract, or to only some of the rights under that contract, a reference in s 45(3)(a) or (4) to the original contract, or a reference in s 45A(6) to the secondary contract arising from the transfer, is to that contract so far as relating to that part or those rights; and that contract so far as not so relating is treated as a separate contract: s 45A(7).

## 4. Leases

A lease is an interest in or right over land for a term of years (whether fixed or periodic) or a tenancy at will or other interest in or right over land terminable by notice at any time[1]. In the application of the stamp duty land tax provisions to a lease for a fixed term, no account is taken of any contingency as a result of which the lease may be determined before the end of the fixed term, or of any right of either party to determine the lease or renew it[2].

A lease which is for a fixed term and thereafter until determined, or a lease for a fixed term that may continue beyond that term by operation of law, is treated in the first instance as if it were a lease for the original fixed term and no longer. If it continues after the end of that term, it is treated as if it were a lease for a fixed term one year longer than the original fixed term; and if it continues for longer than that extra year, as if it were for a fixed term two years longer than the original fixed term, and so on[3].

A lease for an indefinite term[4] is treated in the first instance as if it were a lease for a fixed term of one year. If the lease continues after the end of that term, it is treated as if it were a lease for fixed term of two years, and if it continues longer than that extra year, as if it were for a fixed term of three years, and so on[5].

Where successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and those grants are linked transactions, the stamp duty land tax provisions apply as if the series of leases were a single lease granted at the time of the first in the series, for a term equal to the aggregate of all the terms of the leases, and in consideration of the rent payable under all of the leases[6].

Transactions are 'linked' if they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them[7].

Where a lease is assigned, anything that but for that assignment would be required or authorised to be done by or in relation to the assignor under or by virtue of the provisions relating to adjustments and returns[8] must, if the event giving rise to the adjustment or return occurs after the effective date of the assignment, be done instead by or in relation to the assignee[9].

1 Finance Act 2003 s 120, Sch 17A para 1 (s 120 substituted by Finance Act 2004 Sch 39 para 22(1); Finance Act 2003 Sch 17A added by Finance Act 2004 Sch 39 para 22(2)).

2 Finance Act 2003 Sch 17A para 2.

3 Ibid Sch 17A para 3(1), (2). As to the obligation to make returns and pay tax in such cases, see NOTE 5.

4 References to a lease for an indefinite period include (1) a periodic tenancy or other interest or right terminable by a period of notice; (2) a tenancy at will; or (3) any other interest or right terminable by notice at any time: ibid Sch 17A para 4(5). No account is taken for the purposes of the stamp duty land tax provisions of any other statutory provision deeming a lease for an indefinite period to be a lease for a different term: Sch 17A para 4(2).

5 Ibid Sch 17A para 4(1). No account is to be taken for the purposes of the stamp duty land tax provisions of any other statutory provision deeming a lease for an indefinite period to be a lease for a different term: Sch 17A para 4(2). For the meaning of 'statutory provision', see PARA 1117A.1 NOTE 3.

Where the effect of these provisions in relation to the continuation of the lease after the end of a fixed term is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction, or that tax is payable in respect of a transaction where none was payable before, then (1) the purchaser must deliver a return, or a further return, in respect of that transaction before the end of the period of 30 days after the end of that term; (2) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return; (3) the tax so chargeable must be calculated by reference to the rates in force at the effective date of the transaction; and (4) payment of the tax or additional tax payable must be made not later than the filing date for the return: Sch 17A paras 3(3), 4(3) (Sch 17A paras 3, 4 amended by Finance Act 2007 s 80(8)). For the meaning of 'purchaser', see PARA 1117A.2; and for the meaning of 'notifiable transaction', see PARA 1117A.25. For the meaning of 'effective date', see PARA 1117A.3 NOTE 5; and for the meaning of 'self-assessment', see PARA 1117A.25. The provisions of the Finance Act 2003 Sch 10 (see PARA 1117A.25 et seq) apply to a return under Sch 17A para 3 or 4 as they apply to a return under s 76, with the adaptation that references to the effective date of the transaction are to be read as references to the day on which the lease becomes treated as being for a longer fixed term: Sch 17A paras 3(4), 4(4). For the purposes of ss 77 and 77A (see PARA 1117A.25), a lease to which Sch 17A para 3 applies is a lease for whatever is its fixed term; and for those purposes a lease for an indefinite term is a lease for a term of less than seven years: Sch 17A paras 3(5), 4(4A) (amended by Finance Act 2008 Sch 30 para 14).

6 Finance Act 2003 Sch 17A para 5(1), (2). The grant of later leases in the series is accordingly disregarded (except for the purposes of s 81A (as added:): Sch 17A para 5(3). For the meaning of 'rent', see PARA 1117A.8. As to the grant of a lease, see PARA 1117A.7 NOTE 6.

7 Ibid s 108(1). For the meaning of 'vendor' and 'purchaser', see PARA 1117A.2; and for the meaning of 'connected', see PARA 1117A.3 NOTE 4. Where there are two or more linked transactions with the same effective date, the purchaser, or all of the purchasers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction: s 108(2). For the meaning of 'effective date', see PARA 1117A.3 NOTE 5 and as to the land transaction return, see PARA 1117A.25. See also PARA 1117A.8 NOTE 8.

Section 108 is subject to s 47(1) (see PARA 1117A.5): s 108(4) (added by 2007 Act s 76(2)).

Where the effect of a transaction ('the later transaction') that is linked to an earlier transaction is that the earlier transaction becomes notifiable, or that additional tax is payable in respect of that transaction, or that tax is payable in respect of that transaction where none was payable before, the purchaser under the earlier transaction must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the effective date of the later transaction, including a self-assessment of the amount of tax chargeable as a result of the later transaction (calculated by reference to the rates in force at the effective date of the earlier transaction), and the tax or additional tax payable must be paid not later than the filing date for the return: Finance Act 2003 s 81A(1) (s 81A added by Finance Act 2004 Sch 39 para 19; and amended by 2007 Act s 80(5)). The provisions of the Finance Act 2003 Sch 10 (see PARA 1117A.25 et seq) apply to such a return as

they apply to a return under s 76, except that in Sch 10 para 5, the requirement that the notice specify the transaction to which it relates is to be read as requiring both the earlier and later transactions to be specified; and references to the effective date of the transaction to which the return relates are to be read as references to the effective date of the later transaction: s 81A(2). Section 81A does not affect any requirement to make a return under s 76 (see PARA 1117A.25) in respect of the later transaction: s 81A(3). For the meaning of 'notifiable transaction', see PARA 1117A.25.

8 Ie ibid s 80 (see PARA 1117A.10), s 81A, Sch 17A para 3 or 4, or Sch 17A para 8 (see PARA 1117A.8).

9 Ibid Sch 17A para 12(1). So far as is necessary for giving effect to this provision, anything previously done by or in relation to the assignor is treated as if it had been done by or in relation to the assignee: Sch 17A para 12(2). Schedule 17A para 12 does not apply if the assignment falls to be treated as the grant of a lease by the assignor (see PARA 1117A.7 NOTE 6): Sch 17A para 12(3).

## 5. Options, rights of pre-emption and exchanges

The acquisition of an option binding the grantor to enter into a land transaction[1], or a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction, is itself a land transaction distinct from any land transaction resulting from the exercise of that option or right[2].

Where a land transaction is entered into by the purchaser (alone or jointly) wholly or partly in consideration of another land transaction being entered into by him (alone or jointly) as vendor, these provisions[3] apply in relation to each transaction as if each were distinct and separate from the other[4].

1 The reference to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into such a transaction or to discharge his obligations under the option in some other way: Finance Act 2003 s 46(2). For the meaning of 'land transaction', see PARA 1117A.1.

2 Ibid s 46(1). The effective date of the transaction in the case of the acquisition of such an option or right is when the option or right is acquired (as opposed to when it becomes exercisable): s 46(3). Nothing in s 46 applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from s 46: s 46(4). However, the transactions referred to in the TEXT may be linked transactions: see PARA 1117A.4.

3 Ie ibid Pt 4 (ss 42-124).

4 Ibid s 47(1) (amended by Finance Act 2007 s 76(1)). The transactions must not be linked transactions within the Finance Act 2003 s 108 (see PARA 1117A.4): s 47(1) (as so amended). A transaction is treated as entered into by the purchaser wholly or partly in consideration of another land transaction being entered into by him as vendor in any case where an obligation to give consideration for a land transaction that a person enters into as purchaser is met wholly or partly by way of that person's entering into another transaction as vendor: s 47(2).

## 6. Exempt transactions

A land transaction is exempt from charge if there is no chargeable consideration[1] therefor[2].

The following transactions are specifically exempt.

163 (1) The grant of a lease[3] of a dwelling which is granted for an indefinite term (or which is terminable by notice of a month or less) by a registered social landlord[4] to one or more individuals in accordance with arrangements made between a registered social landlord and a housing authority[5] under which the landlord provides, for individuals nominated by the authority in pursuance of its statutory housing functions, temporary rented accommodation which the landlord itself has obtained on a short-term basis[6].

164 (2) A transaction between one party to a marriage or civil partnership and the other is exempt from charge if it is effected:

17

19. (a) in pursuance of an order of a court made on granting in respect of the parties a decree of divorce, nullity of marriage (or, as the case may be, an order or decree for the dissolution or annulment of the civil partnership), or judicial separation;
20. (b) in pursuance of an order of a court made in connection with the dissolution or annulment of the marriage or civil partnership, or the parties' judicial separation, at any time after the granting of such an order or decree;
21. (c) at any time in pursuance of an agreement of the parties made in contemplation of, or otherwise in connection with, the dissolution or annulment of the marriage or civil partnership, their judicial separation, or the making of a separation order in respect of them[7].

18

165 (3) A transaction following a person's death that varies a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property of which the deceased was competent to dispose is exempt from charge if:

19

22. (a) the transaction is carried out within the period of two years after a person's death; and
23. (b) no consideration in money or money's worth, other than the making of a variation of another such disposition, is given for it[8].

20

The Treasury may by regulations provide that any description of land transaction specified therein is exempt from charge; and such regulations may contain such supplementary, incidental and transitional provisions as appears to the Treasury to be appropriate[9].

1 For the meaning of 'chargeable consideration', see PARA 1117A.7 et seq.

2 Finance Act 2003 s 49(2), Sch 3 para 1. See, however, PARA 1117A.10 NOTE 10, PARA 1117A.38 NOTE 20.

3 For the meaning of 'lease', see PARA 1117A.4.

4 'Registered social landlord' means a body registered as a social landlord in a register maintained under the Housing Act 1985 s 1(1) (see HOUSING vol 22 (2006 Reissue) PARA 67): Finance Act 2003 s 121.

5 'Housing authority' means a principal council within the meaning of the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq), or the Common Council of the City of London: Finance Act 2003 Sch 3 para 2(3).

6 Ibid Sch 3 para 2(2). Accommodation is obtained by the landlord on a short-term basis if it is leased to him for a term of five years or less: Sch 3 para 2(2).

7 Ibid Sch 3 paras 3, 3A (Sch 3 para 3A added by SI 2005/3229). This exemption also applies to a transaction effected in pursuance of an order of a court made at any time under the Matrimonial Causes Act 1973 s 22A, 23A or 24A (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARAS 520-521): Finance Act 2003 Sch 3 para 3. In the case of a civil partnership, it applies to an order of a court under any provision of the Civil Partnership Act 2004 Sch 5 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW) that corresponds to the aforesaid provisions: Finance Act 2003 Sch 3 para 3A.

8 Finance Act 2003 Sch 3 para 4(1), (2). This provision applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions: Sch 3 para 4(3). Where the condition in head (3)(b) of the TEXT is not met, the chargeable consideration for the transaction is determined in accordance with Sch 4 para 8A(2) (see PARA 1117A.9): Sch 3 para 4(2A) (added by Finance Act 2004 s 301(1)).

The acquisition of property by a person in or towards satisfaction of his entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is exempt from charge: Finance Act 2003 Sch 3 para 3A(1) (Sch 3 para 3A added by Finance Act 2004 s 300). However, this provision does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt; and in such a case, the chargeable consideration for the transaction is determined in accordance with the Finance Act 2003 Sch 4 para 8A(1) (see PARA 1117A.9): Sch 3 para 3A(2), (3). 'Debt' means an obligation, whether

certain or contingent, to pay a sum of money either immediately or at a future date; and 'secured debt' means debt that, immediately after the death of the deceased person, is secured on the property: Sch 3 para 3A(4).

9 Ibid Sch 3 para 5. As to the making of such regulations, see PARA 1117A.2 NOTE 5.

The following land transactions are exempt from stamp duty land tax: (1) those effected by or in pursuance of an agreement made or confirmed or used under the Inclosure Act 1845 (s 163A (added by SI 2003/2867)); (2) those effected in pursuance of a grant under the Metropolitan Commons Act 1866 s 32 (s 32A (added by SI 2003/2867)); (3) those effected by virtue of an order under the National Health Service (Scotland) Act 1978 s 12D(1) (s 12DA added by SI 2003/2867)); (4) those effected by a conveyance, agreement or assignation made, or an instrument executed, solely for the purposes of giving effect to any transfer of property, rights or liabilities held on trust under the National Health Service (Scotland) Act 1978 s 82 (s 104A (added by SI 2003/2867)); (5) those effected under or by virtue of any of the provisions of the Further and Higher Education (Scotland) Act 1992 (s 58A (added by SI 2003/2867)); (6) those entered into by or under the direction of any general lighthouse authority for the purposes of carrying on specified services, or under the direction of the Secretary of State for the purposes of carrying specified provisions into effect (Merchant Shipping Act 1995 s 221(2A), (4A), (4B) (added by SI 2003/2867)); (7) those effected by a restructuring scheme, or effected in accordance with, or in pursuance of, an obligation imposed by a restructuring scheme (Broadcasting Act 1996 Sch 7 para 25(1A), (1B) (added by SI 2003/2867)); (8) those effected by virtue of the Education Act 1997 s 30 (s 53A (added by SI 2003/2867)); (9) those effected by or in pursuance of a transfer scheme (Regional Development Agencies Act 1998 s 39A (added by SI 2003/2867)); (10) those entered into by virtue of any of the provisions mentioned in the School Standards and Framework Act 1998 s 79(1) (s 79A (added by SI 2003/2867)); (11) those effected by or in pursuance of a scheme under the Access to Justice Act 1999 Sch 14 para 33 (Sch 14 para 34A (added by SI 2003/2867)); (12) those effected by virtue of the Criminal Justice and Court Services Act 2000 s 76, under which the purchaser is the Court Service (s 76(5)-(7) (added by SI 2003/2867)); (13) those effected by a scheme under the Learning and Skills Act 2000 s 92 or 93 (s 94A (added by SI 2003/2867)); (14) those effected by, or in pursuance of, a scheme under the Transport Act 2000 Sch 15 para 1, Sch 17 para 31, Sch 19 para 1, Sch 21 para1, or Sch 25 para 1 (Sch 26 para 40A (added by SI 2003/2867)); (15) those effected by, or for the purposes of, or for purposes connected with, a transfer scheme (Communications Act 2003 Sch 2 para 5A (added by SI 2003/2867)).

The Treasury may by regulations make such provision as it thinks fit for reproducing in relation to stamp duty land tax the effect of enactments providing for exemption from stamp duty: Finance Act 2003 s 123(3). See Stamp Duty Land Tax (Open-ended Investment Companies) Regulations 2008, SI 2008/710.

## 7. Chargeable consideration; in general

The chargeable consideration for a transaction is, except as otherwise expressly provided, any consideration in money or money's worth given for the subject matter of the transaction, directly or indirectly, by the purchaser or a person connected with him[1]; and is taken to include any value added tax chargeable in respect of the transaction[2]. Items which do not count as chargeable consideration are:

166 (1) in the case of a land transaction[3] giving effect to a partition or division of a chargeable interest to which persons are jointly entitled[4], the share of the interest held by the purchaser immediately before the partition or division[5];

167 (2) in the case of the grant of a lease[6]:

21

24. (a) any undertaking by the tenant to repair, maintain or insure the demised premises;

25. (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord's costs of management;

26. (c) any other obligation undertaken by the tenant that is not such as to affect the rent[7] that a tenant would be prepared to pay in the open market;

27. (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease;

28. (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease;

29. (f) any liability of the tenant for costs which are to be borne[8] by a tenant exercising his statutory right to be granted a lease;

30. (g) any other obligation of the tenant to bear the landlord's reasonable costs or expenses of or incidental to the grant of a lease;

31. (h) any obligation under the lease to transfer to the landlord, on the termination of the lease, payment entitlements granted to the tenant under the single payment scheme[9] in respect of land subject to the lease[10];

22

168 (3) where a lease is granted in consideration of the surrender of an existing lease between the same parties, the grant of the new lease or, as the case may be, the surrender of the old lease[11];

169 (4) in the case of the grant, assignment or surrender of a lease, a reverse premium[12];

170 (5) where the purchaser agrees to indemnify the vendor in respect of liability to a third party arising from breach of an obligation owed by the vendor in relation to the land that is the subject of the transaction, the agreement or any payment made in pursuance thereof[13];

171 (6) in the case of the assignment of a lease, the assumption by the assignee of the obligation to pay rent or to perform or observe any other undertaking of the tenant under the lease[14].

Where, under arrangements made in connection with the grant or assignment of a lease:

172 (a) the lessee (or, as the case may be, the assignee), or any person connected with him or acting on his behalf, pays a deposit , or makes a loan, to any person, and

173 (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the lessee or on the death of the lessee (or as the case may be, by or on the death of the assignee),

the amount of the deposit or loan (disregarding any repayment) is taken for the purposes of the stamp duty land tax provisions to be consideration other than rent given for the grant (or, as the case may be, the assignment) of the lease[15].

The Treasury may by regulations amend or repeal the provisions relating to chargeable consideration and make such other provision as appears to it appropriate with respect to what is to count as chargeable consideration, or the determination of the amount of such consideration[16].

By virtue of such regulations, it is now provided that:

174 (i) where there is a land transaction that is a transfer of value[17] or a disposition, effected by will or under the law of intestacy, of a chargeable interest comprised in the estate of a person immediately before his death; and the purchaser if or becomes liable to pay, agrees to pay, or does in fact pay, any inheritance tax due, his liability or payment does not count as chargeable consideration for the transaction;

175 (ii) where there is a land transaction under which the chargeable interest in question is acquired otherwise than by a bargain made at arm's length, or is treated[18] as so acquired, and the purchaser is or becomes liable to pay, or does in fact pay, any capital gains tax due in respect of the corresponding disposal, his liability or payment does not count as chargeable consideration for the transaction[19].

1 Finance Act 2003 s 50(1), Sch 4 para 1. For the meaning of 'subject matter' of the transaction, and 'purchaser' see PARA 1117A.2 TEXT AND NOTE 7. For the meaning of 'connected person', see PARA 1117A.3 NOTE 4.

2 Ibid Sch 4 para 2. However, value added tax chargeable by virtue of an option to tax any land under the Value Added Tax Act 1994 Sch 10 Pt 1 (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARAS 157-159) made after

the effective date of the transaction is excluded: Finance Act 2003 Sch 4 para 2 (amended by SI 2008/1146). For the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

3 For the meaning of 'land transaction', see PARA 1117A.1.

4 'Jointly entitled' means beneficially entitled as joint tenants or tenants in common: Finance Act 2003 s 121.

5 Ibid Sch 4 para 6.

6 For the meaning of 'lease', see PARA 1117A.4. If the grant of a lease is exempt from charge by virtue of ibid s 57A (see PARA 1117A.14), s 66 (see PARA 1117A.21), Sch 7 Pt 1 (group relief) (see PARA 1117A.17), Sch 7 Pt 2 (reconstruction or acquisition relief: see PARA 1117A.18), Sch 8 (charities relief) (see PARA 1117A.22), or any such regulations as are mentioned in s 123(3) (see PARA 1117A.6), the first assignment of the lease that is not so exempt is treated as if it were the grant of a lease by the assignor: Finance Act 2003 s 120, Sch 17A para 11(1), (2) (s 120 substituted by the Finance Act 2004 Sch 39 para 22(1); Finance Act 2003 Sch 17A added by the Finance Act 2004 Sch 39 para 22(2); Finance Act 2003 Sch 17A para 11(1) amended by the Finance (No 2) Act 2005 s 49, Sch 10 para 12). The grant is treated as being for a term equal to the unexpired term of the original lease, and on the same terms as those on which the assignee holds the lease after the assignment: Finance Act 2003 Sch 17A para 11(2) (Sch 17A as added). However, Sch 17A para 11 does not apply where the relief in question is group relief, reconstruction or acquisition relief or charities relief, and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignment: Sch 17A para 11(4) (Sch 17A as added). 'Disqualifying event' means (1) in relation to the withdrawal of group relief, the event falling within Sch 7 para 3(1)(a) (see PARA 1117A.17 head (i)) as read with Sch 7 para 4A (see PARA 1117A.17 NOTE 20); (2) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in Sch 7 para 9(1)(a) (see PARA 1117A.18) or, as the case may be, the event mentioned in Sch 7 para 11(1)(a) or (2)(a) (see PARA 1117A.18); (3) in relation to the withdrawal of charities relief, a disqualifying event as defined in Sch 8 para 2(3) (see PARA 1117A.22): Sch 17A para 11(5) (amended by Finance (No 2) Act 2005 Sch 10 para 7). For the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

Where a lease is varied so as to increase the amount of the rent as from a date before the end of the fifth year of the term of the lease, the variation is treated as if it were the grant of a lease in consideration of the additional rent made payable by it: Sch 17A para 13(1) (amended by Finance Act 2006 s 164(5), Sch 25 para 6). This does not apply to an increase of rent in pursuance of a provision contained in the lease or a provision mentioned in the Finance Act 2003 Sch 17A para 7(4A) (see PARA 1117A.8): Sch 17A para 13(2) (amended by Finance Act 2006 Sch 25 para 2). Where any consideration in money or money's worth (other than an increase in rent) is given by the lessee for any variation of the lease (other than a variation of the amount of the rent or the term of the lease), the variation is treated for the purposes of the stamp duty land tax provisions as an acquisition of a chargeable interest by the lessee: Finance Act 2003 Sch 17A para 15A(1A) (Sch 17A para 15A added by Finance (No 2) Act 2005 Sch 10 para 13). If a lease is varied so as to reduce the amount of the rent, the variation is treated as an acquisition of a chargeable interest by the lessee; and if a lease is varied so as to reduce the term, the variation is treated as an acquisition of a chargeable interest by the lessor: Finance Act 2003 Sch 17A para 15A.

Where an agreement for a lease is entered into, and the agreement is substantially performed without having been completed, the agreement is treated as if it were the grant of a lease in accordance with the agreement ('the notional lease'), beginning with the date of substantial performance, and the effective date of the transaction is that date: Finance Act 2003 Sch 17A para 12A(1), (2). Where a lease is subsequently granted in pursuance of the agreement, the notional lease is treated as if it were surrendered at that time, and the lease itself is treated for the purposes of Sch 17A para 9 (see PARA 1117A.8) as if it were granted in consideration of that surrender: Sch 17A para 12A(3). However, Sch 17A para 5 (see PARA 1117A.4) does not apply so as to treat the notional lease and the lease itself as a single lease: Sch 17A para 12A(3) (amended by Finance Act 2006 Sch 25 para 4). Where these provisions apply and the agreement is to any extent afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of Finance Act 2003 Sch 17A para 12A(1) must to that extent be repaid by the Inland Revenue: Sch 17A para 12A(4). Repayment must be claimed by amendment of the land transaction return made in respect of the agreement: Sch 17A para 12A(4). For the meaning of 'substantially performed' and 'completed' see s 44; and PARA 1117A.3 (definitions applied by Sch 17A para 12A(5)).

Where a person assigns his interest as lessee under an agreement for a lease, without the agreement's having been substantially performed, s 44 (see PARA 1117A.3) has effect as if the contract were with the assignee and not the assignor, and the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment: Sch 17A para 12B(1), (2). If the assignment occurs after the agreement has been substantially performed, the assignment is a separate land transaction, the effective date of which is the date of the assignment; and where there are successive assignments, this provision has effect in relation to each of them: Sch 17A para 12B(3), (4).

7 For the meaning of 'rent', see PARA 1117A.8.

8 Ie under the Leasehold Reform Act 1967 s 14(2) or the Leasehold Reform, Housing and Urban Development Act 1993 s 60.

9 Ie the scheme of income support for farmers in pursuance of EC Council Regulation 1782/2003 Title III.

10 Finance Act 2003 Sch 17A para 10(1), (2) (Sch 17A para 10(1) amended by SI 2006/875). The release of any such obligation as is mentioned in head (2) of the TEXT also does not count as chargeable consideration: Finance Act 2003 Sch 17A para 10(3). Where head (2) of the TEXT applies in relation to an obligation, a payment made in discharge thereof does not count as chargeable consideration: Sch 17A para 10(2).

11 Ibid Sch 17A para 16. Schedule 4 para 5 (see PARA 1117A.9) does not apply in such a case: Sch 17A para 16.

12 Ibid Sch 17A para 18. A 'reverse premium' means (1) in relation to the grant of a lease, a premium moving from the landlord to the tenant; (2) in relation to the assignment of a lease, a premium moving from the assignor to the assignee; (3) in relation to the surrender of a lease, a premium moving from the tenant to the landlord: Sch 17A para 18(2).

13 Ibid Sch 4 para 16. For the meaning of 'vendor', see PARA 1117A.2.

14 Ibid Sch 17A para 17.

15 Ibid Sch 17A para 18A(1), (2), (6) (Sch 17A para 18A added by Finance (No 2) Act 2005 Sch 10 para 14). These provisions do not apply in relation to a deposit if the amount that would otherwise fall within them is not more than twice the relevant maximum rent, ie (1) in relation to the grant of a lease, the highest amount of rent payable in respect of any consecutive 12-month period in the first five years of the term; (2) in relation to the assignment of a lease, the highest amount of rent payable in respect of any consecutive 12-month period in the first five years of the term remaining outstanding as at the date of the assignment, the highest amount of rent being determined (in either case) in the same way as the highest amount of rent mentioned in the Finance Act 2003 Sch 17A para 7(3) (see PARA 1117A.8): Sch 17A para 18A(3), (4)). Tax is not chargeable by virtue of these provisions merely because of Sch 5 para 9A (see PARA 1117A.12) or Sch 6 para 5(4)(b), 6(6)(b), 9(4)(b) or 10(6)(b) (see PARA 1117A.13): Sch 17A para 18A(5) (amended by Finance Act 2008 s 95(12). The stamp duty land tax provisions are those contained in the Finance Act 2003 Pt 4 (ss 42-124) see PARA 1117A.1 et seq, PARA 1117A.8 et seq.

16 Ibid s 50(2). The regulations may make different provision in relation to different descriptions of transaction or consideration and different circumstances: s 50(3). As to the making of such regulations, see PARA 1117A.1 NOTE 5. See Stamp Duty Land Tax (Amendment of Schedule 4 to the Finance Act 2003) Regulations 2003, SI 2003/3293.

17 Ie within the Inheritance Tax Act 1984 s 3: see INHERITANCE TAXATION vol 24 (Reissue) PARA 409.

18 Ie by the Taxation of Chargeable Gains Act 1992 s 18: see CAPITAL GAINS TAXATION vol 5(1) (2002 Reissue) PARA 9.

19 Finance Act 2003 Sch 4 paras 16A, 16B (Sch 4 paras 16A-16C added by SI 2006/875). It is further provided that costs borne by the purchaser under the Leasehold Reform Act 1967 or the Leasehold Reform, Housing and Urban Development Act 1993 do not count as chargeable consideration: Finance Act 2003 Sch 4 para 16C.

## 8. Chargeable consideration; rent

A single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, is treated as being entirely rent[1].

Where the amount of rent payable under a lease varies in accordance with provisions in the lease, or is contingent, uncertain or unascertained, the following provisions apply:

176 (1) as regards rent payable in respect of any period before the end of the fifth year of the term of the lease, the provisions relating to stamp duty land tax apply as in relation to any other chargeable consideration[2];

177 (2) as regards rent payable in respect of any period before the end of the fifth year of the term of the lease, the annual amount is assumed to be, in every case, equal to the highest amount of rent payable in respect of any consecutive 12-month period in the first five years of the term[3].

No account is taken of any provision for rent to be adjusted in line with the retail price index[4].

Where:

178 (a) A surrenders an existing lease to B ('the old lease') and, in consideration of that surrender, B grants a lease to A of the same or substantially the same premises ('the new lease'); or

179 (b) the tenant under a lease ('the old lease') of specified premises[5] makes a request for a new tenancy ('the new lease') which is duly executed; or

180 (c) on termination of a lease ('the head lease') a sub-tenant is granted a lease ('the new lease') of the same or substantially the same premises as those comprised in his original lease ('the old lease') in pursuance of an order of a court on a claim for relief against re-entry or forfeiture, or in pursuance of a contractual entitlement arising in the event of the head lease being terminated; or

181 (d) a person who has guaranteed the obligations of a lessee under a lease that has been terminated ('the old lease') is granted a lease of the same or substantially the same premises ('the new lease') in pursuance of the guarantee,

the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease[6].

If, after the end of the fifth year of the term of a lease, the amount of rent payable increases (or is increased), whether in accordance with the provisions of the lease or otherwise, and the new rent is such that the increase falls to be regarded as abnormal, the increase in rent is treated as if it were the grant of a lease in consideration of the excess rent[7]. The deemed grant is treated as made on the date on which the increased rent first became payable, and for a term equal to the unexpired part of the original lease[8].

Whether an increase in rent is to be regarded as abnormal is determined as follows:

182 (i) find the start date[9] (Step One);

183 (ii) find the number of whole years in the period between the start date and the date on which the new rent first becomes payable (Step Two)[10];

184 (iii) the rent increase is regarded as abnormal if the excess rent is greater than

$$\frac{R \times Y}{5}$$

185 where R is the rent previously taxed and Y is the number of whole years found under Step Two (Step Three)[11].

Where the tenant under a lease continues in occupation after the date on which, under its terms, the lease terminates ('the contractual termination date'), and he is granted a new lease of the same or substantially the same premises the term of which is expressed to begin on or immediately after the contractual termination date, the term of the new lease is treated as beginning on the date on which it is expressed to begin; and the rent payable under the new lease in respect of any period falling after the contractual termination date and before the date on which the new lease is granted is treated as reduced by the amount of taxable rent that is payable in respect of that period otherwise than under the new lease[12].

1 Finance Act 2003 s 120, Sch 17A para 6(1) (s 120 substituted by Finance Act 2004 Sch 39 para 22(1); Finance Act 2003 Sch 17A added by Finance Act 2004 Sch 39 para 22(2)). This is without prejudice to the Finance Act 2003 Sch 4 para 4 (see PARA 1117A.9) where separate sums are expressed to be paid in respect of rent and other matters: Sch 17A para 6(2). 'Rent' does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease: Sch 5 para 1A (added by Finance Act 2004 Sch 39 para 10).

2 Finance Act 2003 Sch 17A para 7(1), (2)(a). Accordingly, the provisions of s 51(1), (2) (see PARA 1117A.10) apply if the amount is contingent, uncertain or unascertained: Sch 17A para 7(2)(b). For the meaning of 'lease', see PARA 1117A.4. See also NOTE 3.

3 Ibid Sch 17A para 7(1), (3). In computing the amount any amounts determined in accordance with s 51(1), (2) (see PARA 1117A.10) must be taken into account, if necessary; but Sch 17A paras 9(2), 9A(3) must be disregarded: Sch 17A para 7(2)(b), (3) (Sch 17A para 7(3) amended by Finance Act 2006 s 164(5), Sch 25 para 3). For the meaning of 'contingent' see PARA 1117A.10 NOTE 1; and for the meaning of 'uncertain' see PARA 1117A.10 NOTE 3. For the purposes of the Finance Act 2003 Sch 17A paras 7, 8, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under the Agricultural Holdings Act 1986 s 12, 13 or 33 (see AGRICULTURAL LAND vol 1 (2008) PARAS 338, 340, 397) or the Agricultural Tenancies Act 1995 Pt 2 (see AGRICULTURAL LAND vol 1 (2008) PARAS 306-309): Finance Act 2003 Sch 17A para 7(4A) (added by Finance Act 2006 Sch 25 para 2).

Where a lease contains provision under which the rent may be adjusted; under that provision the first (or only) such adjustment is to an amount that (before the adjustment) is uncertain, and has effect from a date ('the review date') that is expressed as falling five years after the specified date; and the specified date falls within the three months before the beginning of the term of the lease, Sch 17A has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date. References to the fifth year of the term of the lease must be read accordingly: Sch 17A para 7A.

Where the provisions of s 51(1), (2) apply in relation to a transaction by virtue of Sch 17A para 7 and either the end of the fifth year is reached or the amount of rent payable in respect of the first five years of the term of the lease ceases to be uncertain at an earlier date, the following provisions have effect to require or permit reconsideration of how the stamp duty land tax provisions apply to the transaction (and to any linked transaction): Sch 17A para 8(1). For this purpose, the amount of rent payable ceases to be uncertain when (in the case of a contingent rent) the contingency occurs or it becomes clear that it will not occur, and (in the case of an uncertain or unascertained rent) the amount becomes ascertained: Sch 17A para 8(2). For the meaning of 'linked transaction', see PARA 1117A.4.

The provisions are as follows. If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that (1) a transaction becomes notifiable, or (2) additional tax is payable in respect of a transaction, or (3) tax is payable where none was payable before, the purchaser must make a return to the Inland Revenue within 30 days of the end of the fifth year of the term of the lease or of the date on which the amount of rent ceases to be uncertain, as the case may be. The return must contain a self-assessment of the tax chargeable in respect of the transaction on the basis of the information contained in the return, calculated by reference to the rates in force at the effective date of the transaction. Payment of the tax must be made not later than the filing date for the return: Sch 17A para 8(3) (Sch 17A para 8 amended by Finance Act 2007 s 80(8)). For the meaning of 'purchaser', see PARA 1117A.2, and for the meaning of 'Inland Revenue', see PARA 1117A.3 NOTE 6. As to notifiable transactions, see PARA 1117A.25. For the meaning of 'self-assessment', see PARA 1117A.25. The provisions of the Finance Act 2003 Sch 10 (see PARA 1117A.25 et seq) apply to a return under Sch 17A para 8 as they apply to a return under s 76, subject to the adaptation that references to the effective date of the transaction are to be read as references to the date referred to in head (3): Sch 17A para 8(4). If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that less tax is payable in respect of the transaction than has already been paid, the amount overpaid, together with interest thereon as from the date of payment, must be repaid on a claim made by the purchaser: Sch 17A para 8(5).

4 Ibid Sch 17A para 7(5).

5 Ie premises to which the Landlord and Tenant Act 1954 Pt 2 (ss 23-46) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 701 et seq) applies.

6 Finance Act 2003 Sch 17A para 9(1), (2) ). The 'overlap period' is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated: Sch 17A para 9(3) (as added). The rent that would have been payable under the old lease is taken to be the amount taken into account in determining the tax chargeable in respect of the acquisition of the old lease: Sch 17A para 9(4). Schedule 17A para 9 does not have effect so as to require the rent payable under the new lease to be treated as a negative amount: Sch 17A para 9(5).

7 Ibid Sch 17A para 14(1), (2) (Sch 17A para 14(1) amended by Finance Act 2006 Sch 25 para 7). 'Lease' means a lease actually granted on or after the date on which the stamp duty land tax provisions came into force (see PARA 1117A.1), or a lease that is treated as existing by reason of a deemed grant under the Finance Act 2003 Sch 17A para 12A(2) (see PARA 1117A.7) or which the effective date is on or after that date: Sch 17A para 14(7) (added by Finance Act 2006 Sch 25 para 7). The 'excess rent' is the difference between the new rent and the rent previously taxed; and the rent previously taxed is (1) where the provisions of Finance Act 2003 Sch 17A para 14 have not previously applied to an increase in the rent payable under the lease (a) if head (b) or (c) does not apply, the rent payable under the lease without the increase referred to in Sch 17A para 14(1), (b) if the amount of rent payable under the lease is determined under Sch 17A para 7, the rent that is assumed to be payable after the fifth year of the term of the lease (in accordance with Sch 17A para 7(3)), (c) if there has been a variation in the lease falling within Sch 17A para 13 (see PARA 1117A.7), the rent payable as a result of the variation (or, if there has been more than one such variation, the most recent); (2) where those provisions have previously so applied, the rent payable as a result of the last increase in relation to which they so applied: Sch 17A para 14(3), (4), (4A) (Sch 17A para 14(4), (4A), (4B) substituted by Finance Act 2006 Sch 25 para 7). In determining the rent previously taxed, the Finance Act 2003 Sch 17A paras 9(2), 9A(3) must be disregarded: Sch 17A para 14(4B). The assumption in Sch 17A para 7(3) does not apply for the purpose of Sch 17A para 14or 15, except for the purpose of determining the rent previously taxed: Sch 17A para 14(6).

8 Ibid Sch 17A para 14(5). The deemed grant is also treated as linked with the grant of the original lease (and with any other transaction with which that transaction is linked): Sch 17A para 14(5).

9 Where the provisions of ibid Sch 17A para 14 have not previously applied to an increase in rent payable under the lease, the start date is: (1) if head (2) or (3) does not apply, the beginning of the term of the lease; (2) if the amount of rent payable under the lease is determined under Sch 17A para 7 the beginning of the period by reference to which the rent assumed to be payable after the fifth year of the term of the lease is determined in accordance with Sch 17A para 7(3); (3) if there has been a variation in the lease falling within Sch 17A para 13 (see PARA 1117A.7), the date of the variation (or, if there has been more than one such variation, the date of the most recent): Sch 17A para 15 (amended by the Finance Act 2006 Sch 25 para 8). Where the provisions of Sch 17A para 14 have previously so applied, the start date is the date of the last increase in relation to which those provisions so applied: Sch 17A para 15 (amended by Finance Act 2006 Sch 25 para 8).

10 Finance Act 2003 Sch 17A para 15 (amended by Finance Act 2006 Sch 25 para 8).

11 Finance Act 2003 Sch 17A para 15 (amended by Finance Act 2006 Sch 25 para 8). For the meaning of 'the rent previously taxed' see NOTE 7.

12 Ibid Sch 17A para 9A(1)-(3) (Sch 17A para 9A added by Finance Act 2006 Sch 25 para 3). However, this provision does not have effect so as to require the rent payable under the new lease to be treated as a negative amount: Finance Act 2003 Sch 17A para 9A(5). Rent is 'taxable' for this purpose if or to the extent that it is taken into account in determining liability to stamp duty land tax: Sch 17A para 9A(4).

## 9. Chargeable consideration; amount or value

The amount or value of the chargeable consideration for a transaction is determined without any discount for postponement of the right to receive it or any part of it[1]. Except as otherwise expressly provided, the value of any chargeable consideration for a land transaction[2], other than money (whether in sterling or another currency) or debt, is taken to be its market value at the effective date of the transaction[3]. The following specific provisions relate to payments otherwise than in money.

186 (1) Where the chargeable consideration for a land transaction consists in whole or in part of the satisfaction or release of debt[4] due to the purchaser or owed by the vendor, or the assumption of existing debt[5] by the purchaser, the amount of the debt[6] so satisfied, released or assumed is taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction[7].

187 (2) Where the chargeable consideration for a land transaction consists of the carrying out of works of construction, improvement or repair of a building, or other works to enhance the value of land[8], then if:

23

32. (a) the works are carried out after the effective date of the transaction;

33. (b) the works are carried out on land acquired or to be acquired under the transaction or on other land held by the purchaser or a person connected with him; and

34. (c) it is not a condition of the transaction that the works are carried out by the vendor or a person connected with him;

24

188 the value of the works does not count as chargeable consideration. However, to the extent that the conditions in heads (a)-(c) above are not met, the value of the works is to be taken into account as chargeable consideration[9].

189 (3) Where the whole or part of the consideration for a land transaction consists of the provision of services[10], the value of that consideration is taken to be the amount that would have to be paid in the open market to obtain those services[11].

Where a land transaction is entered into by reason of the purchaser's employment, or that of a person connected with him, then:

190 (i) if the transaction gives rise to a charge to tax as a benefit in kind[12] and either no rent is payable by the purchaser or the rent payable by the purchaser is less than the cash equivalent of that benefit[13], there is taken to be payable by the purchaser as rent an amount equal to that cash equivalent;

191 (ii) if the transaction would give rise to such a charge but for the land's being provided for the better performance of the purchaser's duties[14], the consideration for the transaction is the actual consideration (if any);

192 (iii) if neither head (a) nor head (b) above applies, the consideration for the transaction is taken to be not less than the market value of the subject matter of the transaction as at the effective date of the transaction[15].

Consideration attributable to two or more land transactions, or in part to a land transaction and in part to another matter, or in part to matters making it chargeable consideration and in part to other matters, must be apportioned on a just and reasonable basis[16]. Where one or more land transactions are entered into by a person as purchaser (alone or jointly) wholly or partly in consideration of one or more other land transactions being entered into by him (alone or jointly) as vendor, then if the subject matter of any of those transactions (a 'relevant transaction') is a major interest in land, then the chargeable consideration for each relevant acquisition[17] is the market value of the subject matter of that acquisition, and if the acquisition is the grant of a lease at a rent, that rent[18]. If the subject matter of none of the relevant transactions is a major interest in land, then:

193 (A) where a single relevant acquisition is made in consideration of one or more relevant disposals[19], the chargeable consideration for the acquisition is the amount or value of any chargeable consideration, other than the disposal or disposals, that is given for the acquisition; and

194 (B) where two or more relevant acquisitions are made in consideration of one or more relevant disposals, the chargeable consideration for each relevant acquisition is the appropriate proportion of the amount or value of any chargeable consideration, other than the disposal or disposals, that is given for the acquisitions[20].

1 Finance Act 2003 s 50, Sch 4 para 3.

2 For the meaning of 'land transaction', see PARA 1117A.1.

3 Finance Act 2003 Sch 4 para 7. 'Market value' is determined in accordance with the Taxation of Chargeable Gains Act 1992 ss 272-274 (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 44): Finance Act

2003 s 118. References to the amount or value of the consideration for a transaction are to its amount or value in sterling; and the sterling equivalent of an amount expressed in another currency is ascertained by reference to the London closing exchange rate on the effective date of the transaction (unless the parties have used a different rate for the purposes of the transaction): Sch 4 para 9. For the meaning of 'effective date', see PARA 1117A.3 NOTE 5, and for the meaning of 'debt' see NOTE 4.

4 'Debt' means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date: Finance Act 2003 Sch 4 paras 7(b), 8(3)(a).

5 'Existing debt', in relation to a transaction, means debt created or arising before the effective date of, and otherwise than in connection with, the transaction: ibid Sch 4 para 8(3)(b).

6 References to the amount of a debt are to the principal amount payable or, as the case may be, the total of the principal amounts payable together with any interest that has accrued due on or before the effective date of the transaction: ibid Sch 4 para 8(3)(c).

7 Ibid Sch 4 para 8(1). For the meaning of 'purchaser' and 'vendor', see PARA 1117A.2. If the effect of Sch 4 para 8 would be that the amount of the chargeable consideration for the transaction exceeded the value of the subject matter of the transaction, the amount of that consideration is limited to that value: Sch 4 para 8(2) (amended by Finance Act 2004 s 301(4)). For the meaning of 'subject matter of the transaction', see PARA 1117A.2 NOTE 7.

Where a debt is secured on the subject matter of a land transaction immediately before and immediately after that transaction, and the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction, then for the purposes of Sch 4 para 8 there is an assumption of that debt by the purchaser, and that assumption of debt constitutes chargeable consideration for the transaction: Sch 4 para 8(1A) (Sch 4 para 8(1A)-(1C) added by Finance Act 2004 s 301(3)). Where existing debt assumed by the purchaser includes debt secured on property forming the subject matter of the transaction, and immediately before the transaction there were two or more persons each holding an undivided share of that property, or there are two or more such persons immediately afterwards, the amount of secured debt assumed is to be determined as if the amount of the debt owed by each of those persons at a given time were the proportion thereof corresponding to his undivided share of the property at that time: Sch 4 para 8(1B). For this purpose, each joint tenant is treated as holding an equal undivided share: Sch 4 para 8(1C).

Where a land transaction would be exempt from charge under Sch 3 para 3A (see PARA 1117A.6) but for Sch 3 para 3A(2), the chargeable consideration for the transaction does not include the amount of any secured debt assumed; and where a land transaction would be exempt from charge under Sch 3 para 4 (see PARA 1117A.6) but for a failure to meet the condition in Sch 3 para 4(2)(b), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned therein: Sch 4 para 8A (added by Finance Act 2004 s 301(5)).

8 For the meaning of 'land', see PARA 1117A.2 NOTE 1.

9 Finance Act 2003 Sch 4 para 10(1), (2). For this purpose, references to the acquisition of land are to the acquisition of a major interest therein, and the value of the works is taken to be the amount that would have to be paid in the open market for the carrying out of the works in question: Sch 4 para 10(3). 'Major interest in land' means an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity: s 117(1), (2). For the meaning of 'connected', see PARA 1117A.3 NOTE 4. Schedule 4 para 10 is subject to para 17 (see PARA 1117A.10): Sch 4 para 10(5) (added by SI 2003/3293).

Where, by virtue of the Finance Act 2003 s 44(8) (see PARA 1117A.2), Sch 17A para 12A (see PARA 1117A.7) or Sch 17A para 19(3)-(6) there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease), the condition in head (2)(a) of the TEXT is treated as met in relation to the second transaction if it is met in relation to the first: Sch 4 para 10(2A) (added by Finance Act 2004 Sch 39 para 9(2); and amended by s 297(8)).

10 Ie services other than the carrying out of works within head (2) of the TEXT.

11 Finance Act 2003 Sch 4 para 11. This is subject to Sch 4 para 17 (see PARA 1117A.10): Sch 4 para 10(5) (added by SI 2003/3293).

12 Ie under the Income Tax (Earnings and Pensions) Act 2003 Pt 3 Ch 5 (ss 97-113): see INCOME TAXATION.

13 Ie as calculated under ibid s 105 or 106: see INCOME TAXATION.

14 Ie in accordance with ibid s 99: see INCOME TAXATION.

15 Finance Act 2003 Sch 4 para 12. 'Employee' includes an office-holder and related expressions have a corresponding meaning: s 121. For the meaning of 'employment' and 'office', see INCOME TAXATION. For the meaning of 'rent', see PARA 1117A.8 NOTE 1; and for the meaning of 'connected person', see PARA 1117A.3 NOTE 4. For the meaning of 'market value', see NOTE 3.

16 Ibid Sch 4 para 4(1). For this purpose, any consideration given for what is in substance one bargain is treated as attributable to all the elements of the bargain, even though separate consideration is, or purports to be, given for different elements of the bargain, or there are, or purport to be, separate transactions in respect of different elements of the bargain: Sch 4 para 4(3). If the consideration is not apportioned, the stamp duty land tax provisions apply as if it had been apportioned: Sch 4 para 4(2).

17 'Relevant acquisition' means a relevant transaction entered into as purchaser: ibid Sch 4 para 5(2)(b).

18 Ibid Sch 4 para 5(1)-(3). For the meaning of 'rent', see PARA 1117A.8 NOTE 1. For the meaning of 'major interest in land', see NOTE 9.

19 'Relevant disposal' means a relevant transaction entered into as vendor: ibid Sch 4 para 5(2)(b).

20 Ibid Sch 4 para 5(4). The appropriate proportion is:

$$\frac{MVI}{TMV}$$

where MVI is the market value of the subject matter of the acquisition for which the chargeable consideration is being determined, and TMV is the total market value of the subject matter of all the relevant acquisitions: Sch 4 para 5(5). Schedule 4 para 5 has effect subject to Sch 4 para 6 (see PARA 1117A.7), but does not apply in a case to which Sch 4 para 17 (see PARA 1117A.10) applies: Sch 4 para 5(6) (amended by Finance Act 2004 Sch 42 Pt 4(2); SI 2003/3293; and SI 2004/1069).

Where the Finance Act 2003 Sch 4 para 5 applies to the acquisition of an interest in a partnership in consideration of entering into a land transaction with an existing partner, the interest in the partnership is treated as a major interest in land if the relevant partnership property includes such an interest: Sch 15 para 16 (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1). The provisions of the Finance Act 2003 Sch 4 para 4 (see PARA 1117A.7) do not apply where Sch 15 para 16 applies: Sch 15 para 16(3). For the meaning of 'relevant partnership property' see PARA 1117A.38).

## 10. Chargeable consideration; special cases

Where the whole or part of the chargeable consideration for a transaction is contingent[1], the amount or value of the consideration is determined on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable[2]. Where the whole or part of the chargeable consideration is uncertain[3] or unascertained, its amount or value is determined on the basis of a reasonable estimate[4].

If and in so far as the chargeable consideration for a land transaction[5] consists of an annuity[6] payable:

195 (1) for life,
196 (2) in perpetuity,
197 (3) for an indefinite period, or
198 (4) for a definite period exceeding 12 years,

the consideration to be taken into account is limited to 12 years' annual payments[7].

Where the purchaser is a company[8] and the vendor is connected with the purchaser, or some or all of the consideration for the transaction consists of the issue or transfer of shares[9] in a company with which the vendor is connected, the chargeable consideration for the transaction is taken to be not less than the market value of the subject matter of the transaction as at the effective date of the transaction and, if the acquisition is the grant of a lease at a rent, that rent[10]. However, this rule (the 'deemed market value rule') does not apply where:

199 (a) immediately after the transaction the company that is the purchaser in relation to that transaction holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts: or
200 (b) immediately after the transaction that company holds the property as trustee, and the vendor is connected with the company only by virtue of being a settlor or connected with a settlor[11];
201 (c) the vendor is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and it is not the case that the subject matter of the transaction or an interest from which that subject matter is derived has, within the period of three years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief[12] was claimed by the vendor[13].

In any case where arrangements are entered into under which:

202 (i) there is a transfer, or the grant or assignment of a lease, of land by a qualifying body[14] ('A') to a non-qualifying body ('B') ('the main transfer');
203 (ii) in consideration (whether in whole or in part) of the main transfer, there is a grant by A to B of a lease or underlease[15] of the whole, or substantially the whole, of that land ('the leaseback');
204 (iii) B undertakes to carry out works or provide services to A; and
205 (iv) some or all of the consideration given by A to B for the carrying out of those works or the provision of those services is consideration in money,

then the leaseback, the carrying out of building works by B for A, or the provision of services by B to A do not count as chargeable consideration for the main transfer or any transfer of surplus land[16]. Similarly, the chargeable consideration for the leaseback does not include the main transfer, any transfer of surplus land, or the consideration in money paid by A to B for the building works or other services[17].These provisions apply whether or not there is also a transfer, or the grant or assignment of a lease, of any other land by A to B (a 'transfer of surplus land')[18].

1 'Contingent', in relation to consideration, means that it is to be paid or provided only if some uncertain future event occurs, or that it is to cease to be paid or provided if some uncertain future event occurs: Finance Act 2003 s 51(3).

2 Ibid s 51(1).

3 'Uncertain', in relation to consideration, means that its amount or value depends on uncertain future events: ibid s 51(3).

4 Ibid s 51(2). Where s 51 applies and (1) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur; or (2) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained, then if the effect of the new information is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction, or that tax is payable where none was payable before, the purchaser must, within 30 days, make a return to the Inland Revenue containing a self-assessment of the tax chargeable in respect of the transaction on the basis of the information contained in the return (calculated by reference to the rates in force at the effective date of the transaction); and the tax or additional tax payable must be paid not later than the filing date for the return: ss 51(4), 80(1), (2) (s 80(2) amended by Finance Act 2004 Sch 42 Pt 4(2); and Finance Act 2007 s 80(3)). The provisions of the Finance Act 2003 Sch 10 apply to such a return as they apply to a return under s 76 (see PARA 1117A.25 et seq): s 80(3) (amended by Finance Act 2004 Sch 39 para 22(4)(a)). If the effect of the new information is that less tax is payable in respect of a transaction than has already been paid, the purchaser may (a) within the period allowed for amendment of the land transaction return, amend the return accordingly, (b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid: Finance Act 2003 s 80(4) (amended by Finance Act 2004 s 299(4)). For the meaning of 'notifiable', see PARA 1117A.25. For the meaning of 'purchaser' and 'effective date', see NOTE 10. Section 80 also applies to any transaction in relation to which the

transaction concerned is a linked transaction (see PARA 1117A.4): s 80(1). Section 51 has effect subject to s 90 (see PARA 1117A.31): s 51(4).

Where the transaction ('the relevant transaction') is the grant or assignment of a lease, no claim may be made under s 80(4) (i) in respect of the repayment (in whole or part) of any loan or deposit that is treated by Sch 17A para 18A (see PARA 1117A.7) as being consideration given for the relevant transaction; or (ii) in respect of the refund of any of the consideration given for the relevant transaction, in a case where the refund is made under arrangements that were made in connection with the relevant transaction, and is contingent on the determination or assignment of the lease or on the grant of a chargeable interest out of the lease: s 80(4A) (added by Finance (No 2) Act 2005 Sch 10 para 15).

5 For the meaning of 'land transaction', see PARA 1117A.1.

6 For this purpose, an annuity includes any consideration (other than rent) that falls to be paid or provided periodically; and references to payment are to be construed accordingly: Finance Act 2003 s 52(6). For the meaning of 'rent', see PARA 1117A.8 NOTE 1.

7 Ibid s 52(1), (2). Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are taken, but no account is to be taken of any provision for adjustment of the amount payable in line with the retail price index: s 52(3). References in s 52 to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction; and the amount or value of any payment is determined (if necessary) in accordance with s 51: s 52(4), (5). Where s 52 applies, s 80 does not apply, and no application may be made under s 90 (see PARA 1117A.31): s 52(7).

8 'Company' means any body corporate: ibid s 53(3).

9 'Shares' includes stock and the reference to shares in a company includes a reference to securities issued by a company: ibid s 53(3).

10 Ibid s 53(1), (1A) (substituted by Finance Act 2004 s 297(4)). For the meaning of 'purchaser' and 'vendor', see PARA 1117A.2; for the meaning of 'connected', see PARA 1117A.3 NOTE 4; and for the meaning of 'effective date', see PARA 1117A.3 NOTE 5. For the meaning of 'subject matter', see PARA 1117A.2 NOTE 7. As to market value, see PARA 1117A.9 NOTE 3. Section 53 applies to the exclusion of Sch 3 para 1 (see PARA 1117A.6): s 53(4).

11 Ie the vendor is connected with the company solely by virtue of the Income and Corporation Taxes Act 1988 s 839(3): see INCOME TAXATION.

12 Ie relief under the Finance Act 2003 Sch 7 Pt 1 (paras 1-6): see PARA 1117A.17.

13 Ibid s 54.

14 A 'qualifying body' is (1) a public body within ibid s 66 (see PARA 1117A.21); (2) an institution within the further education sector or the higher education sector within the meaning of the Further and Higher Education Act 1992 s 91 (see EDUCATION vol 15(2) (2006 Reissue) PARA 646); (3) a further education corporation within the meaning of s 17 (see EDUCATION vol 15(2) (2006 Reissue) PARA 579); (4) a higher education corporation within the meaning of s 90 (see EDUCATION vol 15(2) (2006 Reissue) PARA 646); and (5) a person who undertakes to establish and maintain, and carry on, or provide for the carrying on of, an Academy within the meaning of the Education Act 1996 s 482 (see EDUCATION vol 15(1) (2006 Reissue) PARA 496): Finance Act 2003 Sch 4 para 17 (added by SI 2003/3293).

15 'Underlease' includes a sub-lease: Finance Act 2003 Sch 4 para 17(6).

16 Ibid Sch 4 para 17(1), (3) (Sch 4 para 17(1) amended, Sch 4 para 17(3), (4) substituted, by SI 2004/1069).

17 Finance Act 2003 Sch 4 para 17(1), (4). For the meaning of 'land', see PARA 1117A.2 NOTE 1. Schedule 4 para 17(3), (4) is disregarded for the purposes of determining whether the land transaction in question is notifiable: Sch 4 para 17(4A) (added by Finance Act 2004 Sch 39 para 9(2)).

18 Finance Act 2003 Sch 4 para 17(1).

## 11. Amount of tax chargeable; general

The amount of tax chargeable in respect of a chargeable transaction[1] is a percentage (the 'rate of tax') of the chargeable consideration[2] for the transaction, determined by reference to whether the relevant land[3] consists entirely of residential property or otherwise, and to the amount of the relevant consideration[4].

'Residential property' means:

206 (1) a building that is used or is suitable for use as a dwelling[5], or is in the process of being constructed or adapted for such use; and
207 (2) land that is or forms part of the garden or grounds of a building within head (1) above (including any building or structure on such land); or
208 (3) an interest in or right over land that subsists for the benefit of a building within head (1) above or of land within head (2) above,

and 'non-residential property' means any property that is not residential property[6].

1 For the meaning of 'chargeable transaction', see para 1117A.1.

2 For the meaning of 'chargeable consideration', see para 1117A.7 et seq.

3 The 'relevant land' is the land an interest in which is the main subject matter of the transaction: Finance Act 2003 s 55(3)(a). If the transaction in question is one of a number of linked transactions, the relevant land is any land an interest in which is the main subject matter of any of those transactions: s 55(4)(a). For the meaning of 'land', see para 1117A.2 note 1; for the meaning of 'linked transactions', see para 1117A.4; and for the meaning of 'the main subject matter' of the transaction, see para 1117A.2 note 7.

4 Ibid s 55(1), (2), (7). The 'relevant consideration' is the total of the chargeable consideration for the transaction: s 55(3)(b). If the transaction in question is one of a number of linked transactions, the relevant consideration is the total of the chargeable consideration for all of those transactions: s 55(4)(b).

Where the relevant land consists entirely of residential property, the percentage is as follows:

*Table A: Residential*

| *Relevant consideration* | *Percentage* |
|---|---|
| Not more than £175,000 | 0% |
| More than £175,000 but not more than £250,000 | 1% |
| More than £250,000 but not more than £500,000 | 3% |
| More than £500,000 | 4% |

Where the relevant land consists of non-residential or mixed property, the percentage is as follows:

*Table B: Non-residential or Mixed*

| *Relevant consideration* | *Percentage* |
|---|---|
| Not more than £150,000 | 0% |
| More than £150,000 but not more than £250,000 | 1% |
| More than £250,000 but not more than £5000,000 | 3% |
| More than £500,000 | 4% |

Finance Act 2003 s 55(2) (amended by Finance Act 2006 s 162(1); and Finance Act 2009 s 10(1)). The Finance Act 2003 s 55 has effect subject to s 74 (see para 1117A.24), s 75 (see para 1117A.24) and, in the case of a transaction for which the whole or part of the chargeable consideration is rent, to s 56 and Sch 5 (see para 1117A.12): s 55(5), (6).

5 For this purpose, a building used for any of the following purposes is used as a dwelling: (1) residential accommodation for school pupils; (2) residential accommodation for students (other than accommodation falling within head (b)); (3) residential accommodation for members of the armed forces; (4) an institution that is the sole or main residence of at least 90 per cent of its residents and does not fall within any of heads (1)-(3) or (a)-(f): ibid s 116(2). A building used for any of the following purposes is not used as a dwelling: (a) a home or

other institution providing residential accommodation for children; (b) a hall of residence for students in further or higher education; (c) a home or other institution providing residential accommodation with personal care for persons in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder; (d) a hospital or hospice; (e) a prison or similar establishment; (f) a hotel, inn or similar establishment: s 116(3).

Where a building is used for a purpose specified in heads (a)-(f), no account is taken for the purposes of head (1) of the TEXT of its suitability for any other use: s 116(4). Where a building that is not in use is suitable for use for at least one of the purposes specified in heads (1)-(4) and at least one of those specified in heads (a)-(f), no account is taken for the purposes of head (1) of the TEXT of its suitability for any other use; otherwise the building is treated for those purposes as suitable for use as a dwelling: s 116(5).

6 Ibid s 116(1). 'Building' includes part of a building: s 116(6). Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of the stamp duty land tax provisions as they apply in relation to that transaction, those dwellings are treated as not being residential property: s 116(7). For the meaning of 'major interest', see PARA 1117A.8 NOTE 9; and for the meaning of 'lease', see PARA 1117A.4. The Treasury may by order amend s 116(2), (3) so as to change or clarify the cases where use of a building is, or is not to be, use of a building as a dwelling for the purposes of s 116(1), or amend or repeal s 116(7). Any such order may contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient: s 116(8). As to the making of such orders, see PARA 1117A.2 NOTE 5.

## 12. Amount of tax chargeable; rent

Where the chargeable consideration[1] for a chargeable transaction[2] consists of or includes rent, or where such a transaction is to be taken into account as a linked transaction[3] tax is chargeable in respect of so much of the chargeable consideration as consists of rent[4] The tax so chargeable is the total of the amounts produced by taking the relevant percentage of so much of the relevant rental value as falls within each rate band; and the relevant rate bands and percentages are determined by reference to whether the relevant land[5] consists entirely of residential property[6] or consists of or includes land that is not residential property[7]. The 'relevant rental value' is the net present value[8] of the rent payable over the term of the lease[9].

If the lease in question is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the tax chargeable is determined first by calculating the tax which would be chargeable were the linked transactions a single transaction, on the basis that the relevant rental value is the total of the net present values of the rent payable under the terms of all the leases concerned, and that the relevant land is all the land that is the subject of those leases. That figure is then multiplied by the fraction:

$$\frac{NPV}{TNPV}$$

where NPV is the net present value of the rent payable over the term of the lease in question, and TNPV is the total of the net present values of the rent payable over the terms of all the leases concerned[10].

Where, in the case of a transaction to which these provisions apply, there is chargeable consideration other than rent, the stamp duty land tax provisions apply in relation to that consideration as in relation to other chargeable consideration, and tax chargeable under these provisions is in addition to any tax chargeable[11] in respect of consideration other than rent[12].

1 For the meaning of 'chargeable consideration', see PARA 1117A.7 et seq.

2 For the meaning of 'chargeable transaction', see PARA 1117A.1.

3 For the meaning of 'linked transaction', see PARA 1117A.4.

4 Finance Act 2003 s 56, Sch 5 paras 1, 2(1).

5 The relevant land is the land that is the subject of the lease: ibid Sch 5 para 2(4)(b) (Sch 5 para 2(2)-(6) substituted by SI 2003/2914). For the meaning of 'land', see PARA 1117A.2 NOTE 1.

6 For the meaning of 'residential property', see PARA 1117A.11.

7 Finance Act 2003 Sch 5 para 2(2), (3) (Sch 5 para 2(3) amended by Finance Act 2006 s 162(2); and Finance Act 2009 s 10(1)). If the relevant land consists entirely of residential property, the relevant percentages are as follows:

| *Table A: Residential* | |
|---|---|
| *Relevant rental value* | *Percentage* |
| Not more than £175,000 | 0% |
| More than £175,000 | 1% |

If the relevant land consists of or includes land that is not residential property, the relevant percentages are as follows:

| *Table B: Non-residential or Mixed* | |
|---|---|
| *Relevant rental value* | *Percentage* |
| Not more than £150,000 | 0% |
| More than £150,000 | 1% |

8 The net present value (v) of the rent payable over the term of a lease is calculated by applying the formula:

$$v = \sum_{i=1}^{n} \frac{r_i}{(1+T)^i}$$

where r is the rent payable in respect of year i, i is the first, second, third etc year of the term, n is the term of the lease, and T is the temporal discount rate: Finance Act 2003 Sch 5 para 3 (amended by Finance Act 2004 Sch 42 Pt 4(2); and Finance Act 2006 s 164(2)). For the meaning of 'lease', see PARA 1117A.4.

The 'temporal discount rate' is 3.5 per cent or such other rate as may be specified by regulations made by the Treasury: Finance Act 2003 Sch 5 para 8(1). Such regulations may make such provision as is mentioned in the Finance Act 1989 s 178(3)(b)-(f) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1813), and s 178(5) applies in relation to regulations under the Finance Act 2003 Sch 5 para 8 as it applies in relation to regulations made under the Finance Act 1989 s 178: Finance Act 2003 Sch 5 para 8(2), (3).

9 Ibid Sch 5 para 2(4)(a) (amended by SI 2003/2914).

10 Finance Act 2003 Sch 5 para 2(5), (6) (amended by SI 2003/2914).

11 Ie under the Finance Act 2003 s 55: see PARA 1117A.11. Where a transaction to which Sch 5 applies falls to be taken into account for the purposes of s 55 as a linked transaction, no account is taken of rent in determining the relevant consideration: Sch 5 para 9(5).

12 Ibid Sch 5 para 9(1), (4) (Sch 5 para 9 amended by Finance Act 2008 s 95(2)). In such a case, if the relevant land consists entirely of land that is non-residential property, and the relevant rent is at least £1,000, the 0% band in the Table in the Finance Act 2003 s 55(2) (see PARA 1117A.11) does not apply in relation o the consideration other than rent, and any case that would have fallen within that band is treated as falling wihin the 1% band: Sch 5 para 9A(1), (2) (Sch 5 para 9A added by Finance Act 2008 s 95(3)). If the relevant land is partly residential property and partly non-residential property, and any relevant rent attributable, on a just and reasonable apportionment, to the land that is non-residential property is at least £1,000, then for the purpose of determining the amount of tax chargeable under the Finance Act 2003 s 55 in relation to the consideration other than rent, the transaction (or, where it is one of a number of linked transactions, that set of transactions) is treated as if it were two separate transactions (or sets of linked transactions), namely (1) one the subject matter or which consists of all the interests in the land that is residential property; and (2) one the subject matter of which consist of all the interests in the land that is non-residential property: Sch 5 para 9A(3), (4). For this purpose, the chargeable consideration attributable to each of those separate transactions (or sets of linked transactions) is the chargeable consideration so attributable on a just and reasonable basis: Sch 5 para 9A(5). The 'relevant rent' means the annual rent in relation to the transaction in question or, if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total

of the annual rents in relation to all of those transactions; and 'annual rent' means the average annual rent over the term of the lease or, if different amounts of rent are payable for different parts of the term, and those amounts (or any of them) are ascertainable at the effective date of the transaction, the average annual rent over the period for which the highest ascertainable rent is payable: Sch 5 para 9A(6), (7). 'Relevant land' has the meaning given in s 55(3), (4) (see PARA 1117A,11): Sch 5 para 9A(8). For the meaning of 'effective date' see PARA 1117A.3.

### 13. Reliefs: residential property in disadvantaged areas

If the subject matter[1] of a land transaction[2] is a chargeable interest[3] in relation to land that is wholly situated in a disadvantaged area[4], then if the land is wholly or partly residential property, the following provisions apply[5].

If all the land is residential property[6] and

209 (1) the consideration for the transaction does not include rent[7] and the relevant consideration[8] does not exceed £150,000, or

210 (2) the consideration for the transaction consists only of rent and the relevant rental value[9] does not exceed £150,000,

the transaction is exempt from charge[10]. If the consideration includes rent and the relevant rental value does not exceed £150,000, the rent does not count as chargeable consideration[11]; and if the consideration includes anything other than rent, then provided that the annual rent[12] does not exceed £600, the consideration which is not rent does not count as chargeable consideration[13].

Where the land is partly non-residential property and partly residential property, then if the consideration attributable[14] to the latter does not include rent, and the relevant consideration does not exceed £150,000; or if it consists only of rent and the relevant rental value does not exceed £150,000, none of the consideration so attributable counts as chargeable consideration[15].

If the subject matter of the transaction is a chargeable interest in relation to land that is only partly situated in a disadvantaged area, and the land so situated is wholly or partly residential property, references in the above provisions to the consideration attributable to land situated in a disadvantaged are and to land not so situated (or to the rent or annual rent so attributable) are to the consideration (or rent or annual rent) so attributable on a just and reasonable apportionment[16].

1 For the meaning of 'subject matter', see PARA 1117A.2 NOTE 7.

2 For the meaning of 'land transaction', see PARA 1117A.1.

3 For the meaning of 'chargeable interest', see PARA 1117A.2.

4 A 'disadvantaged area' is an area designated as such by regulations made by the Treasury: Finance Act 2003 s 57, Sch 6 para 1(1). Such regulations may designate specified areas as disadvantaged areas, or provide for areas of a description specified in the regulations to be designated as disadvantaged areas; and if the regulations so provide, the designation of an area as a disadvantaged area has effect for such period as may be specified by, or determined in accordance with, the regulations: Sch 6 para 1(2), (3). The regulations may make different provision for different cases, and contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or appropriate: Sch 6 para 1(4). As to the making of such regulations, see PARA 1117A.2 NOTE 5.

Any regulations made by the Treasury designating areas for the purposes of the Finance Act 2001 s 92 (see PARA 1027) and in force immediately before 1 December 2003 (ie the date on which the stamp duty land tax provisions came into force), have effect for the purposes of the Finance Act 2003 Sch 6 as if made under the provisions set out: Sch 6 para 2.

5 Ibid Sch 6 para 3 (amended by Finance Act 2005 Sch 9 para 1((2), (3)). For the meaning of 'land', see PARA 1117A.2 NOTE 1. In relation to a transfer of an interest in a partnership which is a chargeable transaction by virtue of Sch 15 para 14 (see PARA 1117A.38), the relief applies if every chargeable interest comprising the relevant partnership property is a chargeable interest in relation to land that is wholly situated in a disadvantaged areas; and in relation to such a transfer which is a chargeable transaction by virtue of Sch 15 para 17 (see PARA 1117A.38B) the relief applies if the subject matter of the land transfer is a chargeable interest in relation to land that is wholly situated in a disadvantaged area: Sch 15 para 26(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1). In such cases 'the land transfer' means the transaction that is the land transfer for the purposes of the Finance Act 2003 Sch 15 para 17, the 'relevant partnership property' has the meaning given by Sch 15 para 14(5); and 'the relevant property' means either the relevant partnership property or the subject matter of the land transfer, as the case may be: Sch 6 para 11(1A) (added for this purpose by Sch 15 para 26. There is a transfer of an interest in a partnership for the purposes of Sch 6 if there is such a transfer for the purposes of Sch 15 para 36.

6 For the meaning of 'residential property', see PARA 1117A.11.

7 For the meaning of 'rent', see PARA 1117A.12 NOTE 8 (definition applied by Finance Act 2003 Sch 6 para 12).

8 The 'relevant consideration', in relation to a transaction, is the amount falling to be taken into account for the purposes of ibid s 55(2) (see PARA 1117A.11): Sch 6 para 11(1).

9 The 'relevant rental value', in relation to a transaction, is the amount falling to be taken into account for the purposes of ibid Sch 5 para 2(3) (see PARA 1117A.12) in determining the rate of tax chargeable under Sch 5 in relation to the transaction, apart from any relief under Sch 6 (whether in relation to that or any other transaction): Sch 6 para 11(2).

10 Ibid Sch 6 para 5(2). See generally Inland Revenue Statement of Practice SP 1/2004, 18 June 2004; and NOTE 14.

11 Finance Act 2003 Sch 6 para 5(3). For the meaning of 'chargeable consideration', see PARA 1117A.7 et seq.

12 'Annual rent' has the same meaning as in ibid Sch 5 para 9(2) (see PARA 1117A.12 NOTE 12): Sch 6 para 12.

13 Ibid Sch 6 para 5(3), (4)(a) (Sch 6 para 5(4) amended by Finance Act 2008 s 95(4), (5)). For the purposes of establishing under the Finance Act 2003 s 77 or 77A (see PARA 1117A.25) whether a transaction is notifiable, no account is taken of any provision of Sch 6 to the effect that consideration does not count as chargeable consideration: Sch 6 para 13 (added by Finance Act 2004 s 298(5); and amended by Finance Act 2008 Sch 30 para 6).

14 The consideration attributable to land that is residential property (or the rent or annual rent so attributable) is so much of the total consideration (or rent or annual rent) so attributable on a just and reasonable apportionment: Finance Act 2003 Sch 6 para 6(1) (amended by Finance Act 2005 Sch 9 para 1(4)).

15 Finance Act 2003 Sch 6 para 6(4). If the consideration attributable to residential property includes rent and the relevant rental value does not exceed £150,000, the rent so attributable does not count as chargeable consideration. If the consideration so attributable includes consideration other than rent, then if the annual rent so attributable does not exceed £600, the consideration other than rent does not count as chargeable consideration: Sch 6 para 6(5), (6) (Sch 6 para 6(6) amended by Finance Act 2008 s 95(4), (5)).

In relation to the transfer of an interest in a partnership that is a chargeable transaction by virtue of the Finance Act 2003 Sch 15 para 14 or 17 (see PARA 1117A.38), exemption is granted if the relevant consideration does not exceed £150,000: Sch 6 para 5(2) (Sch 6 modified by Sch 15 para 26). Where the land which is the subject of such a transfer is partly non-residential property and partly residential property, the non-residential proportion of the chargeable consideration for the transaction does not count as chargeable consideration; and if the relevant consideration does not exceed £150,000, none of the residential proportion of the chargeable consideration counts as chargeable consideration: Sch 6 para 6(1), (3), (4). The non-residential proportion of the chargeable consideration is the proportion of the market value of the relevant property that, on a just and reasonably apportionment, is attributable to land that is non-residential property; and the residential proportion is the proportion of that value that, on a just and reasonable apportionment, is attributable to land that is residential property: Sch 6 para 6(3), (5).

16 Ibid Sch 6 para 7 (amended by Finance Act 2005 Sch 9 para 1(5)). The relief applies, mutatis mutandis, to the consideration attributable to land situated within a disadvantaged area: Finance Act 2003 Sch 6 paras 9,10 (amended by Finance Act 2008 s 95(4), (5)). For the modification of the Finance Act 2003 Sch 6 paras 7, 9, 10 in cases where Sch 15 para 14 or 17 applies, see Sch 15 para 26; and NOTE 5.

## 14. Reliefs: sale and leaseback arrangements

The leaseback element of a sale and leaseback arrangement is exempt from charge if the following conditions are met[1]:

211 (1) the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into;
212 (2) the only other consideration (if any) for the sale is the payment of money[2] or the assumption, satisfaction or release of a debt[3](or both);
213 (3) the leaseback is of the same premises that were the subject of the sale;
214 (4) the sale is not a transfer of rights[4]; and
215 (5) where A and B are both bodies corporate at the effective date of the leaseback transaction, they are not members[5] of the same group[6].

A 'sale and leaseback arrangement' means an arrangement under which A transfers or grants to B a major interest in land[7] ('the sale') and, out of that interest, B grants a lease to A ('the leaseback')[8].

1 Finance Act 2003 s 57A(1) (s 57A added by Finance Act 2004 Sch 39 para 16).

2 'Money' means money in sterling or another currency: Finance Act 2003 s 57A (4).

3 'Debt' means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date: ibid s 57A(4).

4 Ie within the meaning of ibid s 45 or s 45A: see PARA 1117A.3.

5 Ie within ibid Sch 7 para 1: see PARA 1117A.17.

6 Ibid s 57A(1), (3) (s 57A(3) amended by Finance Act 2004 Sch 39 para 6). For the meaning of 'effective date' see PARA 1117A.3 NOTE 5.

7 For the meaning of 'major interest' see PARA 1117A.1 NOTE 9.

8 Finance Act 2003 s 57A(2).

## 15. Reliefs: certain acquisitions of residential property

Where a dwelling[1] ('the old dwelling') is acquired[2] by a house-building company[3] from an individual (whether alone or with other individuals), the acquisition is exempt from charge if:

216 (1) the individual (whether alone or with other individuals) acquires from the house-building company a new dwelling[4];
217 (2) the individual occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition (by the house-building company), and intends to occupy the new dwelling as his only or main residence;
218 (3) each acquisition is entered into in consideration of the other; and
219 (4) the area of land acquired by the house-building company does not exceed the permitted area[5].

Where the conditions in heads (1)-(3) above are met, but the area of land acquired by the house-building company exceeds the permitted area, the chargeable consideration[6] for the acquisition is taken to be the amount calculated by deducting the market value[7] of the permitted area from the market value of the old dwelling[8].

Where a dwelling ('the old dwelling') is acquired by a property trader[9] from an individual (whether alone or with other individuals), the acquisition is exempt from charge if:

220 (a) the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies;
221 (b) that individual (whether alone or with other individuals) acquires a new dwelling from a house-building company;
222 (c) the individual occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition (by the property trader) and intends to occupy the new dwelling as his only or main residence;
223 (d) the property trader does not intend to spend more than the permitted amount[10] on refurbishment[11] of the old dwelling, or to grant a lease or licence of the old dwelling (other than a lease or licence to the individual concerned for a period of no more than six months), or to permit any of the trader's principals[12] or employees[13] (or any person connected with any of its principals or employees) to occupy the old dwelling; and
224 (e) the area of land acquired by the property trader does not exceed the permitted area[14].

Where a dwelling ('the old dwelling') is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the individual has made arrangements to sell a dwelling and acquire another ('the second dwelling'), the former arrangements fail, and the acquisition of the old dwelling is made for the purpose of enabling the individual's acquisition of the second dwelling to proceed, provided that:

225 (i) the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in those circumstances;
226 (ii) the individual occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition (by the property trader) and intends to occupy the second dwelling as his only or main residence;
227 (iii) the property trader does not intend to spend more than the permitted amount on refurbishment of the old dwelling, or to grant a lease or licence of the old dwelling (other than a lease or licence to the individual concerned for a period of no more than six months), or to permit any of the trader's principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling; and
228 (iv) the area of land acquired does not exceed the permitted area[15].

Where a dwelling is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if:

229 (A) the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in connection with a change of residence resulting from relocation of employment[16];
230 (B) the individual occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition (by the property trader);
231 (C) the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment;

232 (D) the consideration for the acquisition does not exceed the market value of the dwelling;
233 (E) the property trader does not intend to spend more than the permitted amount on refurbishment of the old dwelling, or to grant a lease or licence of the old dwelling (other than a lease or licence to the individual concerned for a period of no more than six months), or to permit any of the trader's principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling; and
234 (F) the area of land acquired does not exceed the permitted area[17].

The Treasury may make regulations granting relief on the first acquisition of a dwelling[18] which is a zero-carbon home[19]. The relief may take the form of exemption from charge or a reduction in the amount of tax chargeable[20].

1 'Dwelling' includes land occupied and enjoyed with the dwelling as its garden or grounds: Finance Act 2003 s 58A, Sch 6A para 7(1) (s 58A added by SI 2003/2816; and substituted by Finance Act 2004 Sch 39 para 17(1); Finance Act 2003 Sch 6A added by Finance Act 2004 Sch 39 para 17(2)).

2 References to the acquisition of the new dwelling are to the acquisition, by way of grant or transfer, of a major interest in that dwelling; and references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in that dwelling: Finance Act 2003 Sch 6A paras 1(5)(a), (b), 2(5)(a), (b). For the meaning of 'major interest in land', see PARA 1117A.1 NOTE 9.

3 A 'house-building company' means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings, and references in ibid Sch 6A para 1 to such a company include any company connected with it: Sch 6A paras 1(4), 2(4). 'Company', except as otherwise expressly provided, means any body corporate or unincorporated association, but does not include a partnership: s 100(1). For the meaning of 'connected', see PARA 1117A.3 NOTE 4 (definition applied by Sch 6A para 10).

4 A building or part of a building is a 'new dwelling' if (1) it has been constructed for use as a single dwelling and has not previously been occupied; or (2) it has been adapted for use as a single dwelling and has not been occupied since its adaptation: ibid Sch 6A para 7(2).

5 Ibid Sch 6A para 1(2). The 'permitted area', in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed (1) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or (2) such larger area as is required for the reasonable enjoyment of the dwelling as a dwelling, having regard to its size and character: Sch 6A para 7(3). Where head (2) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied: Sch 6A para 7(4).

6 For the meaning of 'chargeable consideration', see PARA 1117A.7 et seq.

7 References to the market value of the old dwelling and of the permitted area are, respectively, to the market value of the major interest in that dwelling, and of that interest so far as it relates to that area: Finance Act 2003 Sch 6A paras 1(5)(c), 2(5)(c). For the meaning of 'market value', see PARA 1117A.9 NOTE 3.

8 Ibid Sch 6A para 1(4).

9 'Property trader' means a company (see NOTE 3), a limited liability partnership, or a partnership the members of which are all either companies or limited liability partnerships, which carries on the business of buying and selling dwellings: ibid Sch 6A para 8(1) (Sch 6A as added: see NOTE 1). For the purposes of Sch 6A (as added), anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that trader: Sch 6A para 8(3)(a). For the meaning of 'connected', see PARA 1117A.3 NOTE 4.

10 The 'permitted amount' in relation to the refurbishment of a dwelling, is £10,000, or 5 per cent of the consideration for the acquisition of the dwelling, whichever is the greater (but subject to a maximum of £20,000): ibid Sch 6A para 9(2).

11 'Refurbishment' of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include cleaning the dwelling or works required solely for the purpose of ensuring that it meets minimum safety standards: ibid Sch 6A para 9(1).

12 In relation to a property trader, a 'principal' means (1) in the case of a company, a director; (2) in the case of a limited liability partnership, a member; (3) in the case of a partnership the members of which are all either companies or limited liability companies, a member, or a person who is a principal of a member: Sch 6A para 8(2). For the purposes of Sch 6A references to the principals or employees of a property trader include the principals or employees of any company connected with that trader: Sch 6A para 8(3)(b). For the meaning of 'connected', see PARA 1117A.3 NOTE 4.

13 For the meaning of 'employee', see PARA 1117A.9 NOTE 15. See also NOTE 12.

14 Ibid Sch 6A para 2(1), (4), (5). Where a dwelling is acquired by a property trader from the personal representatives of a deceased individual, the acquisition is exempt from charge if: (1) the acquisition is made in the course of a business that consists of or includes acquiring dwellings from personal representatives of deceased individuals; (2) the deceased individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of his death; (3) the property trader does not intend to spend more than the permitted amount on refurbishment of the dwelling, or to grant a lease or licence of the dwelling, or to permit any of the trader's principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling; and (4) the area of land acquired does not exceed the permitted area: Sch 6A para 3(1), (2), (4)(b). For the purposes of Sch 6A paras 3, 5, 6, the acquisition of a dwelling means the acquisition, by way of transfer, of a major interest therein: Sch 6A paras 3(4)(a), 5(6)(a), 6(6)(a).

Where the conditions in heads (a)-(d) of the TEXT (or, as the case may be, those in heads (1)-(3)) are met, but the area of land acquired by the property trader exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling: Sch 6A paras 2(3), 3(3). As to withdrawal of relief, see NOTE 17.

15 Ibid Sch 6A para 4(1), (2). References to the acquisition of the second dwelling are to the acquisition, by way of grant or transfer, of a major interest in that dwelling, and references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in that dwelling: Sch 6A para 4(4)(a), (b). Where the conditions in heads (i)-(iii) of the TEXT are met, but the area of land acquired by the property trader exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling: Sch 6A para 3(3), (4)(c). As to withdrawal of relief, see NOTE 17.

16 'Relocation of employment' means a change of the individual's place of employment due to his becoming employed by a new employer, an alteration of the duties of his employment, or an alteration of the place where he normally performs those duties; and a change of residence is one resulting from relocation of employment if (1) the change is made wholly or mainly to allow the individual to have his residence within a reasonable daily travelling distance of his new place of employment, and (2) his former residence is not within a reasonable daily travelling distance of that place: ibid Sch 6A paras 5(5), 6(4), (5). 'New place of employment' means the place where the individual performs, or is normally to perform, the duties of his employment after the relocation: Sch 6A paras 5(5), 6(5). For the meaning of 'employee' and related expressions, see PARA 1117A.9 NOTE 15. See further NOTE 17.

17 Ibid Sch 6A para 6(1), (2), (6). As to the meaning of 'acquisition', see NOTE 14. Relief under Sch 6A para 2 (or, as the case may be, Sch 6A para 3, 4 or 6) is withdrawn if the property trader (1) spends more than the permitted amount on refurbishment of the dwelling concerned; (2) grants a lease or licence of that dwelling (other than as mentioned in the TEXT); or (3) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy that dwelling: Sch 6A para 11(1)-(5). Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief: Sch 6A para 11(6).

An acquisition made in similar circumstances by the individual's employer or prospective employer is also exempt, if conditions corresponding to those set out in heads (B)-(D) and (F) of the TEXT are met: Sch 6A para 5(1), (2). In such a case, 'relocation of employment' means a change of the individual's place of employment due to his becoming an employee of the employer, an alteration of the duties of his employment with that employer, or an alteration of the place where he normally performs those duties: Sch 6A para 5(4). For the meaning of 'resulting from relocation of employment' and 'new place of employment', see NOTE 16.

Where the conditions in heads (A)-(E) (or, as the case may be, heads (B)-(D) of the TEXT are met, but the area of land acquired by the property trader (or, as the case may be, the employer) exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling: Sch 6A paras 5(3), 6(3).

18 A building or part of a building is a 'dwelling' if it is constructed for use as a single dwelling, and 'first acquisition', in relation to a dwelling means its acquisition when it has not previously been occupied: ibid s 58B(2) (ss 58B, 58C added by Finance Act 2007 s 19; s 58B(2) substituted by Finance Act 2008 s 93). For this purpose, land occupied or enjoyed with a dwelling as garden or grounds is part of the dwelling: Finance Act 2003 s 58B(3).

19 Ibid s 58B(1). The regulations must define 'zero' carbon home' by reference to specified aspects of the energy efficiency of a building, for which purpose 'energy efficiency' includes consumption of energy, conservation of energy, and generation of energy; and the defining regulations may include requirements to be satisfied in relation to a dwelling either by features of the building which, or part of which, constitutes the dwelling or by other installations or utilities: ss 58B(4), 58C(3) (s 58C(3) amended by Finance Act 2008 s 93). The relief may take the form of exemption from charge or a reduction in the amount of tax chargeable: Finance Act 2003 s 58B(5).

Such regulations cannot have effect in relation to acquisitions on or after 1 October 2012 (or such later date as the Treasury may by order appoint) and the Treasury may make transitional provision, or provide savings, in connection with the effect of the termination of availability of the relief: s 58B(6), (7).

Such regulations must include provision about the method of claiming relief (including documents or information to be provided) and, in particular, must include provision about the evidence to be adduced to show that a dwelling satisfies the definition of 'zero-carbon home' (and may (1) refer to a scheme or process established by or for the purposes of an enactment about building; (2) establish or provide for the establishment of a scheme or process of certification; (3) specify, or provide for the approval of, one or more schemes or processes for certifying energy efficiency); (4) provide for the charging of fees of a reasonable amount in respect of services provided as part of a scheme or process of certification: s 58C(1), (2) (s 58C as added; s 58C(1), (2) amended by Finance Act 2008 s 93). Such regulations may modify the effect of the Finance Act 2003 s 108 (see PARA 1117A.4) or any other provision of Pt 4 (ss 42-124) about linked transactions, in relation to a set of transactions of which at least one is the first acquisition of a dwelling which is a zero-carbon home; and in determining whether s 116(7) (see PARA 1117A.11) applies, and in the application of that provision, a transaction is disregarded if or insofar as it involves such an acquisition: s 58C(4), (5). Such regulations may (a) provide for relief to be wholly or partly withdrawn if a dwelling ceases to be a zero-carbon home; and (b) provide for the reduction or withholding of relief where a person acquires more than one such home within a specified period: s 58C(6). They may also include provision for relief to be granted in respect of acquisitions occurring during a specified period before the regulations come into force: s 58C(7). See Stamp Duty Land Tax (Zero-Carbon Homes Relief) Regulations 2007, SI 2007/3437.

## 16. Reliefs: compulsory purchase facilitating development; compliance with planning obligations

A compulsory purchase facilitating development[1] is exempt from charge[2].

'Compulsory purchase facilitating development' means the acquisition by a person of a chargeable interest[3] in respect of which that person has made a compulsory purchase order for the purpose of facilitating development by another person[4].

A land transaction[5] that is entered into in order to comply with a planning obligation or modification of a planning obligation[6] is exempt from charge if:

235 (1) the obligation or modification is enforceable against the vendor;
236 (2) the purchaser is a public authority[7]; and
237 (3) the transaction takes place within the period of five years beginning with the date on which the obligation was entered into or modified[8].

1 'Development', in relation to England and Wales, has the same meaning as in the Town and Country Planning Act 1990 s 55 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217): Finance Act 2003 s 60(5)(a).

2 Ibid s 60(1).

3 For the meaning of 'chargeable interest', see PARA 1117A.2.

4 Finance Act 2003 s 60(2)(a). For this purpose, it does not matter how the acquisition is effected (so that s 60(2)(a) applies where the acquisition is by agreement): s 60(3).

5 For the meaning of 'land transaction', see PARA 1117A.1 NOTE 1.

6 In relation to England and Wales, 'planning obligation' means either a planning obligation within the meaning of the Town and Country Planning Act 1990 s 106 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 244) which is entered into in accordance with s 106(9), or a planning obligation within the meaning of s

299A that is entered into in accordance with s 299A(2) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 251): Finance Act 2003 s 61(2)(a). 'Modification' means modification as mentioned in the Town and Country Planning Act 1990 s 106A(1) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 246): Finance Act 2003 s 61(2)(a).

7 In England and Wales, the following are public authorities: a minister of the Crown or government department, the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly government (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq), a county or district council constituted under the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq), the council of a London borough, the Common Council of the City of London, the Greater London Authority, Transport for London, the Council of the Isles of Scilly, a strategic health authority established under the National Health Service Act 2006 s 13 (see HEALTH SERVICES vol 54 (2008) PARA 94), a special health authority established under the National Health Service Act 2006 s 28 or the National Health Service (Wales) Act 2006 s 22 (see HEALTH SERVICES vol 54 (2008) PARA 136), a primary care trust established under the National Health Service Act 2006 s 18 (see HEALTH SERVICES vol 54 (2008) PARA 111), a local health board established under the National Health Service (Wales) Act 2006 s 11 (see HEALTH SERVICES vol 54 (2008) PARA 74), a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18 (see HEALTH SERVICES vol 54 (2008) PARA 155), a local planning authority within the meaning of the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARAS 2, 28-36), or a person prescribed for these purposes by Treasury order: Finance Act 2003 s 61(3) (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 233; Government of Wales Act 2006 s 160, Sch 10 para 63).

8 Finance Act 2003 s 61(1). For the meaning of 'purchaser' and 'vendor', see PARA 1117A.2.

## 17. Reliefs: group relief

A transaction is exempt from charge if the vendor and purchaser are companies that at the effective date[1] of the transaction are members of the same group[2].

Companies are members of the same group if one is the 75 per cent subsidiary of the other or both are 75 per cent subsidiaries of a third company; and for this purpose, a company ('company A') is the 75 per cent subsidiary of another company ('company B') if company B:

238 (1) is beneficial owner[3] of not less than 75 per cent of the ordinary share capital[4] of company A;
239 (2) is beneficially entitled to not less than 75 per cent of any profits available for distribution to equity holders of company A; and
240 (3) would be beneficially entitled to not less than 75 per cent of any assets of company A available for distribution to its equity holders on a winding up[5].

However, group relief is not available if, at the effective date of the transaction, there are arrangements[6] in existence by virtue of which, at that or some later time, a person has or could obtain, or any persons together have or could obtain, control[7] of the purchaser but not of the vendor[8]. Group relief is also denied if the transaction is effected in pursuance of, or in connection with, arrangements under which:

241 (a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company[9]; or
242 (b) the vendor and the purchaser are to cease to be members of the same group by reason of the purchaser ceasing to be a 75 per cent subsidiary of the vendor or a third company[10].

Where, in the case of a transaction ('the relevant transaction') that is exempt from charge by virtue of the above provisions:

243 (i) the purchaser ceases to be a member of the same group as the vendor before the end of the period of three years beginning with the effective date of the transaction, or in pursuance of, or in connection with, arrangements made before the end of that period; and

244 (ii) at the time the purchaser ceases to be a member of the same group as the vendor ('the relevant time') it or a relevant associated company[11] holds a chargeable interest[12] that was either acquired by the purchaser under the relevant transaction or derived from a chargeable interest so acquired, and that has not subsequently been acquired at market value[13] under a chargeable transaction[14] for which group relief was available but was not claimed,

group relief in relation to the relevant transaction, or an appropriate proportion[15] of that relief, is withdrawn and tax is chargeable[16]. However, group relief is not so withdrawn in the following cases:

245 (A) where the purchaser ceases to be a member of the same group as the vendor because the vendor leaves the group[17];

246 (B) where the purchaser ceases to be a member of the same group as the vendor by reason of anything done for the purposes of, or in the course of, winding up the vendor or another company that is above the vendor in the group structure[18];

247 (C) where the purchaser ceases to be a member of the same group as the vendor as a result of a specified acquisition[19] of shares by another company ('the acquiring company'), and the purchaser is, immediately after that acquisition, a member of the same group as the acquiring company[20];

248 (D) where the purchaser ceases to be a member of the same group as the vendor as a result of the transfer of the whole or part of the vendor's business to another company ('the acquiring company') in specified circumstances; and the purchaser is immediately after that transfer a member of the same group as the acquiring company[21].

Group relief must be claimed in a land transaction return or in an amendment of such a return[22].

1 For the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

2 Finance Act 2003 s 62, Sch 7 para 1(1). 'Company' means a body corporate: Sch 7 para 1(2)(a). For the meaning of 'vendor' and 'purchaser', see PARA 1117A.2.

However, group relief is not available if the transaction is not effected for bona fide commercial reasons, or forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax: Sch 7 para 2(4A) (added by Finance (No 2) Act 2005 Sch 10 para 19). 'Tax' means stamp duty, income tax, corporation tax, capital gains tax or stamp duty land tax: Finance Act 2003 Sch 7 para 2(4A).

3 Ie directly or through another company or companies: ibid Sch 7 para 1(4). The amount of ordinary share capital of company A owned by company B through another company or companies is determined in accordance with the Income and Corporation Taxes Act 1988 s 838(5)-(10) (see INCOME TAXATION vol 23(2) (Reissue) PARA 952): Finance Act 2003 Sch 7 para 1(4).

4 'Ordinary share capital', in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company: ibid Sch 7 para 1(5).

5 Ibid Sch 7 para 1(3). The Income and Corporation Taxes Act 1988 Sch 18 (equity holders and profits or assets available for distribution) (see INCOME TAXATION vol 23(2) (Reissue) PARAS 954-959) applies for the purposes of heads (2) and (3) of the TEXT as it applies for the purposes of s 413(7)(a), (b), but with the omission of Sch 18 paras 5(3), 5B-5E: Finance Act 2003 Sch 7 para 1(6).

6 'Arrangements' includes any scheme, agreement or understanding, whether or not legally enforceable: ibid Sch 7 paras 2(5), 3(4), 4(8). For the purposes of Sch 7 para 2(1), the term does not include arrangements entered into with a view to an acquisition of shares by a company ('the acquiring company') (1) in relation to which the Finance Act 1986 s 75 (see PARA 1091) will apply; (2) in relation to which the conditions for relief under s 75 will be met; and (3) as a result of which the purchaser will be a member of the same group as the acquiring company: Finance Act 2003 Sch 7 para 2(1)(a)-(c). See also NOTE 10.

7 'Control' has the meaning given by the Income and Corporation Taxes Act 1988 s 840 (see INCOME TAXATION vol 23(1) (Reissue) PARA 845): Finance Act 2003 Sch 7 para 2(5) (amended by the Finance Act 2006 s 167(2)).

8 Finance Act 2003 Sch 7 para 2(1). Head (b) of the TEXT and Sch 7 para 2(1)do not apply to arrangements in so far as they are for the purpose of facilitating a transfer of the whole or part of the business of a company to another company in relation to which the Finance Act 1997 s 96 (see PARA 1105) is intended to apply and the conditions for relief under that provision are intended to be met: Finance Act 2003 Sch 7 para 2(3A) (added by Finance Act 2006 s 167(3)).

9 'Group company' means a company that, at the effective date of the transaction, is a member of the same group as the vendor or the purchaser: Finance Act 2003 Sch 7 para 2(4).

10 Ibid Sch 7 para 2(2). Arrangements are within head (a) of the TEXT if under them the vendor or the purchaser, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or disposition by a person other than a group company: Sch 7 para 2(3).

11 'Relevant associated company', in relation to the purchaser, means a company that is a member of the same group as the purchaser immediately before the purchaser ceases to be a member of the same group as the vendor, and ceases to be a member of the same group as the vendor in consequence of the purchaser so ceasing: ibid Sch 7 para 3(4)(b).

12 For the meaning of 'chargeable interest', see PARA 1117A.2.

13 For the meaning of 'market value', see PARA 1117A.9 NOTE 3.

14 For the meaning of 'chargeable transaction', see PARA 1117A.1.

15 An 'appropriate proportion' means an appropriate proportion having regard to the subject matter of the relevant transaction and what is held at the relevant time by the transferee company or, as the case may be, by that company and its relevant associated companies: Finance Act 2003 Sch 7 para 3(3). For the meaning of 'subject matter' see PARA 1117A.2 NOTE 7. In relation to a transaction to which Sch 15 para 10 (see PARA 1117A.38) applies which is a chargeable transaction by virtue of Sch 15 para 17 (see PARA 1117A.38), the definition of 'appropriate proportion' is an appropriate proportion having regard to the subject matter of the relevant transaction and was is held at the relevant time by or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership: Sch 7 para 3(3) (amended by Sch 15 para 27 (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1)).

16 Finance Act 2003 Sch 7 para 3(1). The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction, but for group relief, if the chargeable consideration for that transaction had been an amount equal to (1) the market value of the subject matter of the transaction; (2) if the acquisition was the grant of a lease at a rent, that rent; or (3) as the case may be, an appropriate proportion of the tax that would have been so chargeable: Sch 7 para 3(2) (substituted by Finance (No 2) Act 2005 Sch 10 para 4(a)). For the meaning of 'chargeable consideration', see PARA 1117A.7 et seq. As to the return to be made in a case where relief is withdrawn, see PARA 1117A.22 NOTE 10. In relation to a transaction to which the Finance Act 2003 Sch 15 para 10 (see PARA 1117A.38) applies which is a chargeable transaction by virtue of Sch 15 para 17 (see PARA 1117A.38), for 'purchaser' in head (i) of the TEXT, read 'a partner who was a partner at the effective date of the relevant transaction ('the relevant partner'); and for head (ii) of the TEXT read: '(ii) at the time the relevant partner ceases to be a member of the same group as the vendor ('the relevant time'), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest was acquired by or on behalf of the partnership under the relevant transaction, or is derived from a chargeable interest so acquired, and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed: Sch 7 para 3(1) (amended by Sch 15 para 27).

17 The vendor is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in (1) the vendor or in (2) another company that (a) is above the vendor in the group structure, and (b) as a result of the transaction, ceases to be a member of the same group as the purchaser: Finance Act 2003 Sch 7 para 4ZA(2) (Sch 7 para 4ZA added by Finance Act 2008 s 96(4)).

18 For the purposes of the Finance Act 2003 Sch 7 paras 4(4), 4ZA(2), a company is 'above' the vendor in the group structure if the vendor or another company that is above the vendor in the group structure is a 75 per cent subsidiary of the company: Sch 7 para 4(5) (amended by Finance (No 2) Act 2005 Sch 10 para 5(b); and Finance Act 2008 s 96(3), Sch 7 para 4ZA(3)).

19 Ie an acquisition in relation to which the Finance Act 1986 s 75 (see PARA 1091) applies, and the conditions for relief under s 75 are met: Finance Act 2003 Sch 7 para 4(7).

20 Ibid Sch 7 para 4(1), (4), (6). However, if in a case within head (C) of the TEXT (1) the purchaser ceases to be a member of the same group as the acquiring company before the end of the period of three years beginning with the effective date of the relevant transaction, or in pursuance of, or in connection with, arrangements made before the end of that period; and (2) at the time the purchaser ceases to be a member of the same group as the acquiring company it or a relevant associated company holds a chargeable interest that was either acquired by the purchaser under the relevant transaction or derived from a chargeable interest so acquired, and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed, the group relief provisions apply as if the purchaser had then ceased to be a member of the same group as the vendor: Sch 7 para 4(7). In this case, 'relevant associated company', in relation to the purchaser, means a company that is a member of the same group as the purchaser that ceases to be a member of the same group as the acquiring company in consequence of the purchaser so ceasing: Sch 7 para 4(8). Also, where there is a change in the control of the purchaser after the vendor leaves the group, head (C) of the TEXT and Sch 7 paras 3, 4(6), (7), 5 and 6 have effect as if the purchaser had then ceased to be amember of the same group as the vendor (but this does not apply when the change in control arises because a loan creditor obtains control, or ceases to have control, of the purchaser; and the other persons who controlled the purchaser before the change continue to do so: Sch 7 para 4ZA(4), (7). There is a change in control of the purchaser if (1) a person who controls the purchaser (alone or with others) ceases to do so; (2) a person obtains control of the purchaser (alone or with others); or (3) the purchaser is wound up; and for this purpose a person does not control, or obtain control of, the purchaser if that person is under the control of another person or persons: Sch 7 para 4ZA(5), (6). Subject to this,'control' has the meaning given by the Income and Corporation Taxes Act 1988 s 416 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299): Finance Act 2003 Sch 7 para 4ZA(8). 'Loan creditor' has the meaning given by the Income and Corporation Taxes Act 1988 s 417(7)-(9) (see INCOME TAXATION): Finance Act 2003 Sch 7 para 4ZA(7). As to the recovery of group relief from another group company or a controlling director, see PARA 1117A.31. In relation to a transaction to which Sch 15 para 10 (see PARA 1117A.38) applies which is a chargeable transaction by virtue of Sch 15 para 17 (see PARA 1117A.38), for 'purchaser' in Sch 7 para 4 read 'the relevant partner': Sch 7 para 4 (amended by Sch 15 para 27).

Relief may also be withdrawn where in the case of a transaction ('the relevant transaction') that is exempt from charge by virtue of the group relief provisions (1) there is a change in the control of the purchaser which occurs (a) before the end of the period of three years beginning with the effective date of the relevant transaction or (b) in pursuance of, or in connection with, arrangements made before the end of that period; (2) group relief would (apart from this provision) not be withdrawn under Sch 7 para 3; and (3) any previous transaction meets specified conditions, Sch 7 paras 3, 4, 4ZA have effect in relation to the relevant transaction as if the vendor in relation to the earliest previous transaction meeting those conditions were the vendor in relation to the relevant transaction: Sch 7 para 4A(1) (Sch 7 para 4A added by Finance (No 2) Act 2005 Sch 10 para 6; and amended by Finance Act 2008 s 96(5)). The conditions are (a) that the previous transaction is exempt from charge by virtue of the Finance Act 2003 Sch 7 para 1, 7 or 8 (see PARA 1117A.18); (b) that the effective date of the previous transaction is less than three years before the date of the event falling within head (1); (c) that the chargeable interest acquired under the relevant transaction by the purchaser in relation to that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the purchaser in relation to the previous transaction; and (d) that since the previous transaction, the chargeable interest acquired thereunder has not been acquired by any person under a transaction that is not exempt from charge by virtue of the Finance Act 2003 Sch 7 para 1, 7 or 8: Sch 7 para 4A(2). For these purposes there is a change in the control of a company if any person who controls the company (whether alone or with others) ceases to do so, a person obtains control of the company (alone or with others), or the company is wound up; and 'control' for this purpose is construed in accordance with the Income and Corporation Taxes Act 1988 s 416 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299): Finance Act 2003 Sch 7 para 4A(3). However, head (1) dies not apply if the change in control arises because a loan creditor obtains control, or ceases to have control, of the purchaser; and the other persons who controlled the purchaser before the change continue to do so: Sch 7 para 4A(3A) (added by Finance Act 2008 s 96(5)). If two or more transactions effected at the same time are the earliest previous transactions falling within heads (a)-(d), the reference in the Finance Act 2003 Sch 7 para 4A(1) to the vendor in relation to the earliest previous transaction is a reference to the persons who are the vendors in relation to the earliest previous transactions: Sch 7 para 4A(4). 'Arrangements' includes any scheme, agreement or understanding, whether or not legally enforceable: Sch 7 para 4A(5). 'Loan creditor' has the meaning given by the Income and Corporation Taxes Act 1988 s 417(7)-(9) (see INCOME TAXATION): Finance Act 2003 Sch 7 para 4A(3A).

21 Ibid Sch 7 para 4(6A) (added by Finance Act 2006 s 167(4). The specified circumstances are that the Finance Act 1997 s 96 (see PARA 1105) applies and that the conditions for relief under that provision are met: Finance Act 2003 Sch 7 para 4(6A).

22 Ibid s 62(3). As to land transaction returns, see PARA 1117A.25. As to group relief generally, see Inland Revenue *Tax Bulletin* April 2004 pp 1104-1107.

## 18. Reliefs: reconstruction and acquisition

Where a company[1] ('the acquiring company') acquires the whole or part of the undertaking of another company (the 'target company') in pursuance of a scheme for the reconstruction of the target company, and

249 (1) the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares[2] in the acquiring company to all the shareholders of the target company[3];
250 (2) after the acquisition has been made each shareholder of each of the companies is a shareholder of the other, and the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder[4];
251 (3) the acquisition is effected for bona fide commercial reasons and does not form part of a scheme or arrangement of which the main purpose, or one of the main purposes, is the avoidance of liability to tax[5],

a land transaction[6] entered into for the purposes of or in connection with the transfer of the undertaking or part is exempt from charge[7].

Where a company ('the acquiring company') acquires the whole or part of the undertaking of another company 'the target company') and:

252 (a) the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to the target company or to all or any of the target company's shareholders[8];
253 (b) the acquiring company is not associated[9] with another company that is a party to arrangements[10] with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part[11];
254 (c) the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests[12]; and
255 (d) the acquisition is effected for bona fide commercial reasons and does not form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax[13];

the rate of tax chargeable on a land transaction entered into for the purposes of or in connection with the undertaking or part is limited to 0.5 per cent[14].

Where, in the case of a transaction ('the relevant transaction') that is exempt from charge or is subject to a reduced rate of tax by virtue of the above provisions:

256 (i) control of the acquiring company changes[15] before the end of the period of three years beginning with the effective date[16] of the transaction, or in pursuance of, or in connection with, arrangements made before the end of that period; and
257 (ii) at the time control of the company changes ('the relevant time') it or a relevant associated company[17] holds a chargeable interest[18] that was either acquired by the acquiring company under the relevant transaction or derived from a chargeable interest so acquired, and that has not subsequently been acquired at market value[19] under a chargeable transaction[20] for which reconstruction or acquisition relief was available but was not claimed,

reconstruction or acquisition relief in relation to the relevant transaction, or an appropriate proportion[21] of that relief, is withdrawn and tax is chargeable[22]. However, relief is not so withdrawn in the following cases:

258 (A) where control of the acquiring company changes as a result of a share transaction effected in connection with divorce[23] or as a result of the variation of a will[24];
259 (B) where control of the acquiring company changes as a result of an exempt intra-group transfer[25];
260 (C) where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief[26] applies;
261 (D) where control of the acquiring company changes as a result of a loan creditor[27] becoming, or ceasing to be, treated as having control of the company, and the other persons who were previously treated as controlling the company continue to be so treated[28].

Reconstruction or acquisition relief must be claimed in a land transaction return or an amendment of such a return[29].

1 For the meaning of 'company', see PARA 1117A.15 NOTE 3. These provisions appear to be inappropriate to unincorporated associations, but, in the absence of express provision to the contrary, the definition given in PARA 1117A.15 (which includes such associations) prevails.

2 'Non-redeemable shares' means shares that are not redeemable shares: Finance Act 2003 s 62, Sch 7 paras 7(2), 8(2).

3 Ibid Sch 7 para 7(2). Where the consideration for the acquisition consists partly of the issue of non-redeemable shares, this condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company: Sch 7 para 7(3). See also NOTE 4.

4 Ibid Sch 7 para 7(4). If, immediately before the acquisition, the target company or the acquiring company holds any of its own shares, the shares must be treated for the purposes of Sch 7 para 7(2), (4) as having been cancelled before the acquisition (and, accordingly, the company is treated as if it were not a shareholder in itself): Sch 7 para 7(5A) (added by Finance Act 2007 s 74(3)).

5 Finance Act 2003 Sch 7 para 7(5). 'Tax' means stamp duty, income tax, corporation tax, capital gains tax or stamp duty land tax: Sch 7 para 7(5). The disclosure provisions of the Finance Act 2004 Pt 7 (ss 306-309) (see INCOME TAXATION) apply for stamp duty land tax purposes: see Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005, SI 2005/1868.

6 For the meaning of 'land transaction', see PARA 1117A.1.

7 Finance Act 2003 Sch 7 para 7(1).

8 Ibid Sch 7 para 8(2). Where the consideration for the acquisition consists partly of the issue of non-redeemable shares, this condition is met only if the rest of the consideration consists wholly of (1) cash not exceeding 10 per cent of the nominal value of the non-redeemable shares so issued; (2) the assumption or discharge by the acquiring company of liabilities of the target company; or (3) both of those things: Sch 7 para 8(3).

9 Companies are associated if one has control of the other or both are controlled by the same person or persons: ibid Sch 7 para 8(5) (substituted by Finance (No 2) Act 2005 Sch 10 para 20(a)). 'Control' is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 416 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299): Finance Act 2003 Sch 7 paras 8(5), 9(5)(b), 11(6)(b).

10 'Arrangements' includes any scheme, arrangement or understanding, whether or not legally enforceable: ibid Sch 7 paras 8(5C), 9(5)(a), 11(6)(a) (Sch 7 para 8(5C) added by Finance (No 2) Act 2005 Sch 10 para 20(b).

11 Finance Act 2003 Sch 7 para 8(4).

12 Ibid Sch 7 para 8(5A) (added by Finance (No 2) Act 2005 Sch 10 para 8). 'Trade' has the same meaning as in the 1988 Act (see INCOME TAXATION): Finance Act 2003 Sch 7 para 8(5A).

13 Ibid Sch 7 para 8(5B) (added by Finance (No 2) Act 2005 Sch 10 para 20(b)). 'Tax' means stamp duty, income tax, corporation tax, capital gains tax or stamp duty land tax: Sch 7 para 8(5B) (as so added).

14 Ibid Sch 7 para 8(1) (amended by Finance (No 2) Act 2005 Sch 10 para 8).

15 References to the control of a company changing are to the company becoming controlled (1) by a different person, (2) by a different number of persons, or (3) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled: ibid Sch 7 paras 9(5)(c), 11(6)(c). For the meaning of 'control', see NOTE 9.

16 For the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

17 'Relevant associated company', in relation to the acquiring company, means a company that is controlled by the acquiring company immediately before the control of that company changes, and of which control changes in consequence of the change of control of that company: Finance Act 2003 Sch 7 paras 9(4), 11(5).

18 For the meaning of 'chargeable interest', see PARA 1117A.2.

19 For the meaning of 'market value', see PARA 1117A.9 NOTE 3.

20 For the meaning of 'chargeable transaction', see PARA 1117A.1.

21 An 'appropriate proportion' means an appropriate proportion having regard to the subject matter of the relevant transaction and what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies: Finance Act 2003 Sch 7 paras 9(3), 11(4). For the meaning of 'subject matter', see PARA 1117A.2 NOTE 7.

22 Ibid Sch 7 para 9(1). The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction, but for reconstruction or acquisition relief, if the chargeable consideration for that transaction had been an amount equal to (1) the market value of the subject matter of the transaction; (2) if the acquisition was the grant of a lease at a rent, that rent; or, as the case may be, an appropriate proportion of the tax that would have been so chargeable: Sch 7 para 9(2) (amended by Finance (No 2) Act 2005 Sch 10 para 9). For the meaning of 'chargeable consideration', see PARA 1117A.7 et seq. As to the return to be made in cases where relief is withdrawn, see PARA 1117A.22 NOTE 10.

23 Ie a share transaction effected as mentioned in the Finance Act 2003 Sch 3 para 3(a)-(d): see PARA 1117A.6.

24 Ie a share transaction effected as mentioned in ibid Sch 3 para 4(1) (see PARA 1117A.6) which meets the conditions in Sch 3 para 4(2): see PARA 1117A.6.

25 An 'exempt intra-group transfer' is a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of the Finance Act 1930 s 42 (see PARA 1090): Finance Act 2003 Sch 7 para 10(4). Where head (B) of the TEXT has effect to prevent the withdrawal of relief on a change of control of the acquiring company, but (1) a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company before the end of the period of three years beginning with the effective date of the relevant transaction, or in pursuance of or in connection with arrangements made before the end of that period; and (2) the acquiring company or a relevant associated company, at that time ('the relevant time') holds a chargeable interest that was transferred to the acquiring company by the relevant transaction or is derived from an interest that was so transferred, and that has not subsequently been transferred at market value by a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed, relief in relation to the relevant transaction, or an appropriate proportion thereof, is withdrawn and tax is chargeable: Sch 7 para 11(1). For the meaning of 'control', see NOTE 9. See further NOTE 26.

26 'Share acquisition relief' means relief under the Finance Act 1986 s 77 (see PARA 1097), and a transfer is one to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of s 77: Finance Act 2003 Sch 7 para 10(5). Where head (C) in the TEXT has effect to prevent the withdrawal of relief on a change of control of the acquiring company, but (1) control of the other company mentioned in head (C) changes before the end of the period of three years beginning with the effective date of the relevant transaction, or in pursuance of or in connection with arrangements made before the end of that period, at a time when that company holds any shares transferred to it by the exempt transfer, or any shares derived from shares so transferred; and (2) the acquiring company or a relevant associated company, at that time ('the relevant time') holds a chargeable interest that was transferred to the acquiring company by the relevant transaction or is derived from an interest that was so transferred, and that has not subsequently been

transferred at market value by a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed, relief in relation to the relevant transaction, or an appropriate proportion thereof, is withdrawn and tax is chargeable: Sch 7 para 11(2). For the meaning of 'control', see NOTE 9. See further NOTE 26.

27 'Loan creditor' has the meaning given by the 1988 Act s 417(7)-(9) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1301): Finance Act 2003 Sch 7 para 10(6).

28 Ibid Sch 7 para 10. The tax which is chargeable where Sch 7 para 11(1) or (2) (see NOTES 23, 24) applies is that which would have been chargeable in respect of the relevant transaction but for reconstruction or acquisition relief if the chargeable consideration for that transaction had been an amount equal to the market value of the subject matter of the transaction or, as the case may be, an appropriate proportion of the tax that would have been so chargeable: Sch 7 para 11(3). For the recovery of relief from another group company or a controlling director, see PARA 1117A.31.

29 Ibid s 62(3). As to land transaction returns, see PARA 1117A.25.

## 19. Reliefs: demutualisation of insurance companies and building societies

A land transaction[1] is exempt from charge if it is entered into for the purpose of or in connection with a qualifying transfer of the whole or part of the business of a mutual insurance company[2] ('the mutual') to a company that has share capital ('the acquiring company')[3].

A transfer is a qualifying transfer if:

262 (1) it is a transfer of a business consisting of the effecting or carrying out of contracts of insurance and takes place under an insurance business transfer scheme[4]; or

263 (2) it is a transfer of business of a general insurance company[5] carried on through a permanent establishment in the United Kingdom and takes place in accordance with authorisation granted[6] outside the United Kingdom and, in either case:

25

35. (a) shares in the issuing company[7] are offered, under the scheme, to at least 90 per cent of the persons who are members of the mutual immediately before the transfer; and

36. (b) under the scheme, all the shares in the issuing company that will be in issue immediately after the transfer has been made, other than shares that are to be or have been issued pursuant to an offer to the public, are offered to the persons who (at the time of the offer) are members of the mutual, persons entitled to become members of the mutual, or employees[8], former employees or pensioners[9] of the mutual or a wholly-owned subsidiary[10] of the mutual[11].

26

A land transaction effected on the transfer[12] of a building society's business to a commercial company is exempt from charge[13].

1 For the meaning of 'land transaction', see PARA 1117A.1.

2 'Mutual insurance company' means an insurance company carrying on business without having any share capital; and 'insurance company' means a company that carries on the business of effecting or carrying out contracts of insurance: Finance Act 2003 s 63(7). 'Contract of insurance' has the meaning given by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 3(1) (see INSURANCE vol 25 (2003 Reissue) PARA 21): Finance Act 2003 s 63(7).

3 Ibid s 63(1).

4 'Insurance business transfer scheme' has the same meaning as in the Financial Services and Markets Act 2000 Pt VII (see INSURANCE): Finance Act 2003 s 63(7).

5 'General insurance company' means a company that has permission under the Financial Services and Markets Act 2000 Pt IV (see INSURANCE) or Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12(1)) to effect or carry out contracts of insurance: Finance Act 2003 s 63(7).

6 Ie for the purposes of EC Council Directive 2002/83 art 14 or EC Council Directive 92/49 art 12: Finance Act 2003 s 63(2)(b), (7).

7 The 'issuing company' is either the acquiring company or a company of which the acquiring company is a wholly-owned subsidiary: ibid s 63(2).

8 'Employee', in relation to a mutual insurance company or its wholly-owned subsidiary, includes any officer or director of the company or subsidiary and any other person taking part in the management of the affairs of the company or subsidiary: ibid s 63(7).

9 'Pensioner', in relation to a mutual insurance company or its wholly-owned subsidiary, means a person entitled (whether currently or prospectively) to a pension, lump sum, gratuity or other like benefit referable to the service of any person as an employee of the company or subsidiary: ibid s 63(7).

10 A company is the wholly-owned subsidiary of another company ('the parent') if the company has no members except the parent and the parent's wholly-owned subsidiaries or persons acting on behalf of the parent or the parent's wholly-owned subsidiaries: ibid s 63(6). For the meaning of 'company', see PARA 1117A.15 NOTE 3.

11 Ibid s 63(2), (3). The Treasury may by regulations amend s 63(3) (see head (a) of the TEXT) by substituting a lower percentage for the percentage there mentioned, and provide that all the references in s 63(3), (4) to members are to be construed as references to members of a class specified in the regulations. Such regulations may make different provision for different cases: s 63(5). As to the making of such regulations, see PARA 1117A.2 NOTE 5.

12 Ie a transfer effected by the Building Societies Act 1986 s 97(6) or (7): see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1938.

13 Finance Act 2003 s 64.

## 20. Reliefs: incorporation of limited liability partnership

A transaction by which a chargeable interest[1] is transferred by a person ('the transferor') to a limited liability partnership[2] in connection with its incorporation is exempt from charge if:

264 (1) the effective date[3] of the transaction is not more than one year after the date of incorporation of the limited liability partnership;

265 (2) at the relevant time[4] the transferor is a partner in a partnership comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else), or holds the interest transferred as nominee or bare trustee for one or more or the partners in such a partnership[5].

1 For the meaning of 'chargeable interest', see PARA 1117A.2.

2 Ie a limited liability partnership formed under the Limited Liability Partnerships Act 2000: see PARTNERSHIP vol 79 (2008) PARA 234 et seq.

3 For the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

4 The 'relevant time' means (1) where the transferor acquired the interest after the incorporation of the limited liability partnership, immediately after he acquired it; and (2) in any other case, immediately before its incorporation: Finance Act 2003 s 65(5).

5 Ibid s 65(1)-(4), (6). For the meaning of 'bare trust', see PARA 1117A.37.

## 21. Reliefs: transfers involving public bodies and reorganisation of parliamentary constituencies

A land transaction[1] entered into on, or in consequence of, or in connection with, a reorganisation[2] effected by or under a statutory provision[3] is exempt from charge if the purchaser and vendor are both public bodies[4].

Where an Order in Council is made[5] and an existing local constituency association[6] transfers a chargeable interest[7]:

266 (1) to a new association[8] that is a successor[9] to the existing association, or
267 (2) to a related body[10] that as soon as practicable transfers the interest or right to a new association that is such a successor,

the transfer or, where head (2) above applies, each of the transfers, is exempt from charge[11].

1 For the meaning of 'land transaction', see PARA 1117A.1.

2 'Reorganisation' means changes involving (1) the establishment, reform or abolition of one or more public bodies, (2) the creation, alteration or abolition of functions to be discharged or discharged by one or more public bodies; or (3) the transfer of functions from one public body to another: Finance Act 2003 s 66(3).

3 For the meaning of 'statutory provision', see PARA 1117A.1 NOTE 3.

4 Finance Act 2003 s 66(1). 'Public bodies' are defined in terms similar to those applying to 'public authorities' (see PARA 1117A.16 NOTE 7), but with the addition of a body (other than a company) that is established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision; the term also includes a company in which all the shares are owned by such a body, and a wholly-owned subsidiary of such a body: see s 66(4) (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 234; Government of Wales Act 2006 s 160, Sch 10 para 63).'Company' means a company as defined by the Companies Act 2006 s 1 (see COMPANIES vol 14 (2009) PARA 32): Finance Act 2003 s 66(6) (added by Finance (No 2) Act 2005 Sch 10 para 18). For the meaning of 'purchaser' and 'vendor', see PARA 1117A.2.

The Treasury may by order provide that a land transaction that is not entered into as mentioned in the Finance Act 2003 s 66(1) is exempt from charge if the transaction is effected by or under a statutory provision prescribed by such an order and either the purchaser or the vendor is a public body: s 66(2). See Finance Act 2003, Section 66 (Prescribed Transactions) Order 2005, SI 2005/645; Finance Act 2003, Section 66 (Prescribed Statutory Provisions) Order 2007, SI 2007/1385. As to the making of such orders, see PARA 1117A.2 NOTE 5.

5 Ie under the Parliamentary Constituencies Act 1986: see PARLIAMENT vol 78 (2010) PARAS 892, 893. In relation to any such order, 'the date of the change' means the date on which the order comes into force, 'former parliamentary constituency' means an area that, for the purposes of parliamentary elections, was a constituency immediately before that date but is no longer such a constituency after that date, and 'new parliamentary constituency' means an area that, for those purposes, is such a constituency after that date but was not such a constituency immediately before that date: Finance Act 2003 s 67(1)(a), (2).

6 In relation to the date of the change (see NOTE 5), 'existing local constituency association' means a local constituency association the area of which was the same, or substantially the same, as the area of a former parliamentary constituency or two or more such constituencies: ibid s 67(3)(a). 'Local constituency association' means an unincorporated association (whether described as an association, a branch or otherwise) the primary purpose of which is to further the aims of a political party in an area that at any time is or was the same or substantially the same as the area of a parliamentary constituency or two or more parliamentary constituencies: s 67(4)(a).

7 For the meaning of 'chargeable interest', see PARA 1117A.2.

8 In relation to the date of the change (see NOTE 5), 'new association' means a local constituency association the area of which is the same, or substantially the same, as that of a new parliamentary constituency or two or more such constituencies: ibid s 67(3)(b).

9 A new association is a successor to an existing association if any part of the existing association's area is comprised in the new association's area: Finance Act 2003 s 67(5).

10 'Related body', in relation to a local constituency association, means a body (whether corporate or unincorporated) that is an organ of the political party concerned: ibid s 67(4)(b).

11 Ibid s 67(1).

## 22. Reliefs: charities and other bodies for national benefit

A land transaction[1] is exempt from charge if the purchaser is a charity[2] and:

268 (1) the purchaser intends to hold the subject matter[3] of the transaction for qualifying charitable purposes;
269 (2) the transaction is not entered into for the purpose of avoiding stamp duty land tax (whether by the purchaser or any other person)[4].

'Qualifying charitable purposes' means for use in furtherance of the charitable purposes of the purchaser or of another charity, or as an investment from which the profits are applied to the charitable purposes of the purchaser[5].

Where in the case of a transaction ('the relevant transaction') that is exempt by virtue of the above provisions:

270 (a) a disqualifying event[6] occurs before the period of three years beginning with the effective date[7] of the transaction, or in pursuance of, or in connection with, arrangements made before the end of that period; and
271 (b) at the time of the disqualifying event the purchaser holds a chargeable interest[8] that was acquired by the purchaser under the relevant transaction, or that is derived from an interest so acquired,

charities relief in relation to the relevant transaction, or an appropriation proportion[9] thereof, is withdrawn and tax is chargeable accordingly[10]. The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for charities relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable[11].

A land transaction is also exempt from charge if the purchaser is any of the following:

272 (i) the Historic Buildings and Monuments Commission for England;
273 (ii) the National Endowment for Science, Technology and the Arts;
274 (iii) the Trustees of the British Museum;
275 (iv) the Trustees of the National Heritage Memorial Fund;
276 (v) the Trustees of the Natural History Museum[12].

Where a land transaction is not exempt from charge under the provisions above because the condition set out in head (1) above is not met, but the purchaser ('C') intends to hold the greater part of the subject matter of the transaction for qualifying charitable purposes, the transaction is exempt from charge, but a disqualifying event occurs if there is any transfer by C of a major interest in the whole or any part of the subject matter of the transaction, or any grant by C at a premium[13] of a low-rental lease[14] of the whole or any part of that subject matter, that is not made in furtherance of the charitable purposes of C[15].

1 For the meaning of 'land transaction', see PARA 1117A.1.

2 'Charity' means a body or trust established for charitable purposes only: Finance Act 2003 s 68(1), Sch 8 para 1(4). For the meaning of 'charitable purposes', see INCOME TAXATION. Schedule 8 applies in relation to a charitable trust as it applies in relation to a charity, and 'charitable trust' means a trust of which all the beneficiaries are charities, or a unit trust scheme in which all the unit holders are charities: Sch 8 para 4(1), (2) (Sch 8 para 4 added by the Finance Act 2004 s 302(2)). In the Finance Act 2003 Sch 8 as so applicable, references to the purchaser in Sch 8 para 1(2)(a), (b) are to the beneficiaries or unit holders, or any of them; the reference to the purchaser in Sch 8 para 2(3)(a) is to any of the beneficiaries or unit holders; and the

reference in Sch 8 par 3(2)(b) to the charitable purposes of C is to those of the beneficiaries or unit holders, or any of them: Sch 8 para 4(3).

3 For the meaning of 'subject matter', see PARA 1117A.2 NOTE 7.

4 Finance Act 2003 Sch 8 para 1(1)-(3) (amended by the Finance Act 2004 s 302(3)). For the meaning of 'purchaser', see PARA 1117A.2. Any relief under these provisions must be claimed in a land transaction return or an amendment of such a return: s 68(2). As to land transaction returns, see PARA 1117A.25. In relation to a transaction to which Sch 15 para 14 or 17 (see PARA 1117A.38) applies, the exemption is given in relation to a transfer of an interest in a partnership that is a chargeable transaction by virtue of either of those provisions if the transferee is a charity: Sch 8 para 1(1) (modified by Sch 15 para 28 (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1). In such a case (1) every chargeable interest held as partnership property immediately after the transfer must be held for qualifying charitable purposes; and (2) for 'the purchaser' in the Finance Act 2003 Sch 8 paras 1(2), (3), 2(3)(a) read 'the transferee': Sch 4 paras 1, 2 (as so modified). There is a transfer of an interest in a partnership for these purposes if there is such a transfer for the purposes of Sch 15 para 36 (see PARA 1117A.38), and Sch 15 para 34(1) (see PARA 1117A.38) applies for the purposes of Sch 8 as it applies for the purposes of Sch 15 paras 9-40: Sch 8 para 3 (added for this purpose by Sch 15 para 28).

5 Ibid Sch 8 paras 1(2), 2(5).

6 A 'disqualifying event' means (1) the purchaser ceasing to be established for charitable purposes only; or (2) the subject matter of the transaction, or any interest or right derived therefrom, being used or held by the purchaser otherwise than for qualifying charitable purposes: ibid Sch 8 para 2(3). In relation to a transaction to which Sch 15 para 14 or 17 (see PARA 1117A.38) applies, for head (2) read: 'any chargeable interest held as partnership property immediately after the relevant transaction, or any interest or right derived from it, being used or held otherwise than for qualifying charitable purposes: Sch 4 para 2(3) (modified by Sch 15 para 28(7)).

7 For the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

8 For the meaning of 'chargeable interest', see PARA 1117A.2.

9 'Appropriate proportion' means an appropriate proportion having regard to (1) what was acquired by the purchaser under the relevant transaction and what is held by the purchaser at the time of the disqualifying event; and (2) the extent to which what is held by the purchaser at that time becomes used or held for purposes other than qualifying charitable purposes: Finance Act 2003 Sch 8 para 2(4). In relation to a transaction to which Sch 15 para 14 or 17 (see PARA 1117A.38) applies, an 'appropriate proportion' means an appropriate proportion having regard to (a) the chargeable interests held as partnership property immediately after the relevant transaction and the chargeable interest held as partnership property at the time of the disqualifying event, and (b) the extent to which any chargeable interest held as partnership property which at that time becomes used or held for purposes other than qualifying charitable purposes: Sch 8 para 2(4) (modified by Sch 15 para 28(8) (as substituted: see NOTE 4).

10 Ibid Sch 8 para 2(1) (amended by the Finance Act 2004 s 302(4)). Where relief is withdrawn to any extent under these provisions or under the Finance Act 2003 Sch 7 Pt 1 (see PARA 1117A.17) or Pt 2 (see PARA 1117A.18), the purchaser must deliver a further return before the end of the period of 30 days after the date on which the disqualifying event occurred. The return must include a self-assessment of the amount of tax chargeable. Tax payable must be paid not later than the filing date for the return. The provisions of Sch 10 (see PARA 1117A.25) apply to such a return as they apply to a return under s 76, with references to the transaction to which the return relates being read as references to the disqualifying event, and reference to the effective date of the transaction being read as references to the date on which that event occurs: s 81(1)-(3) (s 81(1) amended by Finance Act 2004 Sch 39 para 17(3)(a); Finance Act 2003 s 81(2) amended by the Finance Act 2007 s 80(4)); Finance Act 2003 s 81(3) amended by Finance Act 2004 Sch 39 para 19(2)). The 'disqualifying event' is (1) in relation to the withdrawal of group relief, the purchaser's ceasing to be a member of the same group as the vendor within the meaning of the Finance Act 2003 Sch 7 Pt 1 (see PARA 1117A.17); (2) in relation to the withdrawal of construction or amalgamation relief, the change of control of the acquiring company mentioned in Sch 7 para 9(1)(a) or, as the case may be, the event mentioned in Sch 7 para 11(1)(a) or (2)(a) (see PARA 1117A.18); and (3) in relation to the withdrawal of charities relief, a disqualifying event as defined in Sch 8 para 2(3): s 81(4).

In relation to a transaction to which Sch 15 para 14 or 17 (see PARA 1117A.38) applies, head (b) of the TEXT reads: '(b) at the time of the disqualifying event the partnership property includes a chargeable interest (i) that was held as partnership property immediately after the relevant transaction, or (ii) that is derived from an interest held as partnership property at that time': Sch 8 para 2(1)(b) (modified by Sch 15 para 28(5)).

11 Ibid Sch 8 para 2(2).

12 Ibid s 69.

13 A lease is granted at a premium if there is consideration other than rent: ibid Sch 8 para 3(3) (Sch 8 para 3 added by Finance Act 2004 s 302(1)). For the meaning of 'rent', see PARA 1117A.8.

14 A lease is a 'low-rental' lease if the annual rent (if any) is less than £1,000 a year: Finance Act 2003 Sch 8 para 3(3) (amended by Finance Act 2008 s 95(7)). For the meaning of 'annual rent' see PARA 1117A. 8.

15 Ibid Sch 8 para 3(1), (2). For the meaning of 'major interest' see PARA 1117.9 NOTE 9; and for the meaning of 'subject matter of the transaction' see PARA 1117A.2 NOTE 7. In relation to a transaction which is a disqualifying event by virtue of this provision, the date of the event is the effective date of the transaction, and Sch 8 para 2 has effect as if in Sch 8 para 2(1)(b) 'immediately before' were substituted for 'at the time of'; as if in Sch 8 para 2(4)(a) 'immediately before and immediately after' were substituted for 'at the time of'; and as if Sch 8 para 2(4)(b) were omitted: Sch 8 para 3(4).

## 23. Reliefs; right to buy, shared ownership leases etc

In the case of a right-to-buy transaction the provisions including contingent consideration in chargeable consideration[1] do not apply, and any consideration that would be payable only if a contingency were to occur, or that is payable only because a contingency has occurred, does not count as chargeable consideration[2].

A 'right-to-buy transaction' means the sale of a dwelling at a discount, or the grant of a lease of a dwelling at a discount, by a relevant public sector body[3], or the sale of a dwelling, or the grant of a lease of a dwelling, in pursuance of the preserved right to buy[4].

Where:

277 (1) a lease is granted by a qualifying body[5], or in pursuance of the preserved right to buy;
278 (2) the lease is of a dwelling;
279 (3) the lease gives the lessee or lessees exclusive use of the dwelling;
280 (4) the lease provides for the lessee or lessees to acquire the reversion;
281 (5) the lease is granted partly in consideration of rent and partly in consideration of a premium calculated by reference to the market value[6] of the dwelling or a sum calculated by reference to that value, and contains a statement of that value or sum; and
282 (6) the purchaser elects for tax to be charged in accordance with these provisions,

the chargeable consideration for the grant of the lease is taken to be the amount stated in the lease in accordance with head (5) above[7]. Where such an election is made, the chargeable consideration for the grant of the lease is taken to be the amount stated therein in accordance with head (5) above[8].

Where a lease is granted and the conditions set out in heads (1)-(3) above are met, an election for special tax treatment is also open to the purchaser if:

283 (a) the lease provides that the lessee or lessees may, on the payment of a sum, require the terms of the lease to be altered so that the rent payable under the lease is reduced;
284 (b) the lease is granted partly in consideration of rent and partly in consideration of a premium calculated by reference to the premium obtainable on the open market for the grant of a lease containing the same terms as the lease in question, but with the substitution of the minimum rent[9] for the rent payable under the lease, or a sum calculated by reference to that premium; and
285 (c) the lease contains a statement of the minimum rent and of that premium or of the sum calculated by reference thereto[10].

If such an election is made, the rent in consideration of which the lease is granted is taken to be the minimum rent stated in the lease in accordance with head (c) above, and the chargeable consideration for the grant other than rent is taken to be the amount so stated[11].

The chargeable consideration for a rent-to-mortgage transaction[12] is equal to the price that would be payable[13] for a transfer of the dwelling to the person (where the rent-to-mortgage transaction is a transfer), or the grant of a lease of the dwelling to the person (where that transaction is the grant of a lease)[14].

Where under a shared ownership lease[15], the lessee has, or lessees have, the right, on the payment of a sum, to require the terms of the lease to be altered so that the rent payable thereunder is reduced, and by exercising that right he or they acquire an interest, additional to one already held, calculated by reference to the market value[16] of the dwelling and expressed as a percentage of the dwelling or its value (a 'share of the dwelling'), such an acquisition is exempt from charge if (i) an election[17] was made and any tax chargeable in respect of the grant of the lease has been paid, or (ii) immediately after the acquisition the total share of the dwelling held by the lessee or lessees doe not exceed 80 per cent[18].

Where a shared ownership trust is declared and the purchaser so elects, the chargeable consideration for the declaration of the shared ownership trust is taken to be the sum specified in head (C)(ff) below, and no account is taken for the purposes of stamp duty land tax of rent-equivalent payments[19].

A shared ownership trust is a trust of land[20] which satisfies the following conditions:

286 (A) the trust property is a dwelling[21] in England or Wales;
287 (B) one of the beneficiaries (the 'social landlord') is a qualifying body;
288 (C) the terms of the trust:

27

37. (aa) provide for one or more of the individual beneficiaries (the 'purchaser')[22] to have exclusive use of the trust property as his only or main residence,
38. (bb) require the purchaser to make an initial payment to the social landlord (the 'initial capital'),
39. (cc) require the purchaser to make additional payments to the social landlord by way of compensation[23] ('rent-equivalent payments'),
40. (dd) enable the purchaser to make other additional payments to the social landlord ('equity-acquisition payments'),
41. (ee) determine the initial beneficial interests of the social landlord and the purchaser by reference to the initial capital,
42. (ff) specify a sum, equating or relating to the market value of the dwelling, by reference to which the initial capital was calculated, and
43. (gg) provide for the purchaser's beneficial interest in the trust property to increase, and the social landlord's to diminish (or to be extinguished), as equity-acquisition payments are made[24].

28

If no election is made, the initial capital is treated for the purposes of stamp duty land tax as chargeable consideration other than rent, and any rent-equivalent payment by the purchaser is treated for those purposes as a payment of rent[25].

1 Ie the Finance Act 2003 s 51(1): see PARA 1117A.10.

2 Ibid s 70, Sch 9 para 1(1). A grant under the Housing Act 1996 s 20 or 21 (see HOUSING vol 22 (2006 Reissue) PARAS 32, 33) does not count as part of the chargeable consideration for a right-to-buy transaction in relation to which the vendor is a registered social landlord: Finance Act 2003 Sch 9 para 1(5). As to chargeable consideration, see PARA 1117A.7 et seq. For the meaning of 'purchaser' and 'vendor' see PARA 1117A.2; and for the meaning of 'registered social landlord', see PARA 1117A.6 NOTE 4.

3 'Relevant public sector body' means a minister of the Crown; a local housing authority (within the meaning of the Housing Act 1985 (see HOUSING); the Housing Corporation; a registered social landlord; a housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (see HOUSING vol 22 (2006 Reissue) PARA 320); the Homes and Communities Agency; a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981; an urban development corporation established by an order made under the Local Government Planning and Land Act 1980 s 135; a police authority within the meaning of the Police Act 1996 s 101(1) (see POLICE vol 36(1) (2007 Reissue) PARA 139); the United Kingdom Atomic Energy Authority; and any body prescribed for these purposes by Treasury order: Finance Act 2003 Sch 9 para 1(3) (amended by SI 2005/3226). Reference to Housing Corporation treated as reference to the Regulator of Social Housing: Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008, SI 2008/2839.

4 Finance Act 2003 Sch 9 para 1(2). For the purposes of Sch 9 para 1(2), the transfer of a dwelling, or the grant of a lease of a dwelling, is made in pursuance of the preserved right to buy if the vendor is in England and Wales, a person against whom the right to buy under the Housing Act 1985 Pt V (ss 118-188) (see HOUSING vol 22 (2006 Reissue) PARA 115) is exercisable by virtue of s 171A; (2) the purchaser is the qualifying person for the purposes of the preserved right to buy; and (3) the dwelling is the qualifying dwelling house in relation to the purchaser: Finance Act 2003 Sch 9 para 1(4). For the meaning of 'lease' and 'grant of a lease', see PARA 1117A.4.

5 A 'qualifying body' means a local housing authority (within the meaning of the Housing Act 1985) (see HOUSING vol 22 (2006 Reissue) PARA 9); a housing association within the meaning of the Housing Act 1985 (see HOUSING vol 22 (2006 Reissue) PARA 11); a housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (see HOUSING vol 22 (2006 Reissue) PARA 320); the Commission for the New Towns; or a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981: Finance Act 2003 Sch 9 para 5(1), (2) (Sch 9 para 5(1) amended by the Finance Act 2004 s 303(2)).

6 The definition of 'market value' given at PARA 1117A.9 NOTE 3 does not apply for this purpose: Finance Act 2003 Sch 9 para 2(5).

7 Ibid Sch 9 para 2(1), (2). Such an election must be included in the land transaction return (see PARA 1117A.25) made in respect of the grant of the lease, or in an amendment of that return, and is irrevocable, so that the return may not be amended to as to withdraw the election: Sch 9 para 2(3). For the meaning of 'rent', see PARA 1117A.8 NOTE 1. Where Sch 9 para 2 applies, no account is taken for the purposes of stamp duty land tax of the rent mentioned in head (5) in the TEXT: Sch 9 para 2(4A) (added by Finance Act 2007 s 78).

For the purposes of the Finance Act 2003 Sch 9 paras 2, 4, a lease is granted in pursuance of the preserved right to buy if (1) the vendor is a person against whom the right to buy under the Housing Act 1985 Pt V (see HOUSING vol 22 (2006 Reissue) PARA 115) is exercisable by virtue of s 171A; (2) the lessee is, or the lessees are, the qualifying person for the purposes of the preserved right to buy; and (3) the lease is of a dwelling that is the qualifying dwelling house in relation to the purchaser: Finance Act 2003 Sch 9 para 5(1), (3).

8 Ibid Sch 9 para 2(4). The transfer of the reversion to the lessee or lessees under the terms of a lease to which Sch 9 para 2 applies is exempt from charge if an election was made for tax to be charged in accordance with that provision and any tax chargeable in respect of the grant of the lease has been paid: Sch 9 para 3.

9 'Minimum rent' means the lowest rent which could become payable under the lease if it were altered as mentioned in head (a) of the TEXT at the date when the lease was granted: ibid Sch 9 para 4(5).

10 Ibid Sch 9 para 4(1), (2). Such an election must be included in the land transaction return (see PARA 1117A.25) made in respect of the grant of the lease, or in an amendment of that return, and is irrevocable, so that the return may not be amended to as to withdraw the election: Sch 9 para 2(3).

11 Ibid Sch 9 para 4(4).

12 Ie the transfer of a dwelling to a person, or the grant of a lease of a dwelling to a person, pursuant to the exercise by that person of the right to acquire on rent to mortgage terms under the Housing Act 1985 Pt V (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1872 et seq): Finance Act 2003 Sch 9 para 6(2).

13 Ie by virtue of the Housing Act 1985 s 126 (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1836), if the person were exercising the right to buy under Pt V: Finance Act 2003 Sch 9 para 6(3).

14 Ibid Sch 9 para 6(1).

15 Ie a lease granted by a qualifying body, or in pursuance of the preserved right to buy, in relation to which the conditions mentioned in heads (2)-(5) in the TEXT are met: ibid Sch 9 paras 4A(3), 4B(2) (Sch 9 para 4A added by Finance Act 2004 s 303(1); Finance Act 2003 Sch 9 para 4B added by Finance Act 2008 s 95(8)).

16 Finance Act 2003 s 118 (see PARA 1117.9 NOTE 3) does not apply in relation to the meaning of 'market value' in this context: Sch 9 para 4A(4).

17 Ie an election for tax to be charged in accordance with ibid Sch 9 para 2 or, as the case may be, Sch para 4.

18 Ibid Sch 9 para 4A(1), (2). For the purposes of determining the rate of tax chageable on the grant of a shared ownership lease of a dwelling, the grant is treated as if it were not linked to any acquisition of the dwelling to which Sch 9 para 4A applies, or a transfer of the reversion to the lessee or lessees under the terms of the lease: Sch 9 para 4B(1).

19 Ibid Sch 9 para 9(1), (4) (Sch 9 paras 7-10 added by Finance Act 2007 s 77). An election must be included in the land transaction return for the declaration of the shared ownership trust or in an amendment to that return and is irrevocable: Finance Act 2003 Sch 9 para 9(2), (3). The transfer to the purchaser of an interest in the trust property on the termination of the trust is exempt from charge if such an election was made and any tax chargeable in respect of the declaration of the shared ownership trust has been paid: Sch 9 para 9(5). For the meaning of 'land transaction return', see PARA 1117A.25. See also NOTE 24. For the purpose of determining the rate of tax chargeable on the declaration of a shared ownership trust, the declaration is treated as if it were not linked to any equity-acquisition payment under the trust or any consequent increase in the purchaser's beneficial interest in the trust property, or to a transfer to the purposes of an interest in the trust property on the termination of the trust: Sch 9 para 12 (added by Finance Act 2008 s 95(10)).

20 Ie within the meaning of the Trusts of Land and Appointment of Trustees Act 1996 s 1: see REAL PROPERTY vol 42 (Reissue) PARA 146 NOTE 3.

21 'Dwelling' includes (1) a building which is being constructed or adapted for use as a dwelling; (2) land which is to be used for the purpose of the construction of a dwelling; and (3) land which is, or is to become, the garden or grounds of a dwelling: Finance Act 2003 Sch 9 para 7(6).

22 For the purposes of the application of stamp duty land tax in relation to a shared ownership trust, the person (or persons) identified as the purchaser in accordance with this provision, and not the social landlord or any other beneficiary is (or are) treated as the purchaser of the trust property: ibid Sch 9 para 8.

23 Ie compensation under the Trusts of Land and Appointment of Trustees Act 1996 s 13(6)(a): see TRUSTS vol 48 (2007 Reissue) PARA 739 NOTE 11.

24 Finance Act 2003 Sch 9 para 7(1)-(4). The meaning of 'market value' given by s 118 (see PARA 1117A.9 NOTE 3) does not apply for this purpose: Sch 9 para 7(5). An equity-acquisition payment under a shared ownership trust, and the consequent increase in the purchaser's beneficial interest, are exempt from charge if an election was made and any tax chargeable in respect of the declaration of trust has been paid: Sch 9 para 10(1) (amended by Finance Act 2008 s 95(9)). Such a payment and consequent increase are also exempt from charge if, following the increase, the purchaser's beneficial interest does not exceed 80 per cernt of the total beneficial interest in the trust property: Finance Act 2003 Sch 9 para 10(2).

25 Ibid Sch 9 para 11 (amended by Finance Act 2008 s 95(9)).

## 24. Reliefs; other transactions

A land transaction[1] under which the purchaser is a registered social landlord is exempt from charge if the registered social landlord is controlled by its tenants[2], the vendor is a qualifying body[3], or the transaction is funded with the assistance of a public subsidy[4].

Special provisions apply where arrangements are entered into between a person[5] and a financial institution[6] under which:

289 (1) the institution purchases a major interest in land[7] or an undivided share in a major interest in land ('the first transaction');
290 (2) where the interest purchased is an undivided share, the major interest is held in trust for the institution and the person as beneficial tenants in common;
291 (3) the institution (or the person holding the land in trust as mentioned in head (2) above) grants to the person out of the major interest a lease (if the major interest is freehold) or a sub-lease (if the major interest is leasehold) ('the second transaction'); and

292 (4) the institution and the person enter into an agreement[8] under which the person has a right to require the institution or its successor in title to transfer to the person (in one transaction or a series of transactions) the whole interest purchased by the institution under the first transaction[9].

The provisions are that:

293 (a) the first transaction is exempt from charge if the vendor is the person concerned , or another financial institution by which the interest was acquired under arrangements of the kind mentioned in heads (1) to (4) above entered into between it and that person ;
294 (b) the second transaction is exempt from charge if the stamp duty land tax provisions[10] which relate to the first transaction are complied with (including the payment of any tax chargeable); and
295 (c) any transfer to the person concerned that results from the exercise of the right mentioned in head (4) above ('a further transaction') is exempt from charge if (i) those provisions which relate to the first and second transactions are complied with and (ii) at all times between the second transaction and the further transaction , the interest purchased under the first transaction is held by a financial institution (so far as not transferred by a previous further transaction) and the lease or sub-lease granted under the second transaction is held by the person concerned [11].

Where arrangements are entered into between a person and a financial institution under which the institution purchases a major interest in land ('the first transaction') and sells that interest to that person ('the second transaction'), and that person grants the institution a legal mortgage[12] over that interest, then:

296 (i) the first transaction is exempt from charge if the vendor is the person concerned, or another financial institution by which the interest was acquired under other arrangements of the kind mentioned in heads (1)-(3) above entered into between it and that person ; and
297 (ii) the second transaction is exempt from charge if the financial institution complies with the stamp duty land tax provisions relating to the first transaction (including the payment of any tax chargeable)[13].
298 The above provisions do not apply to arrangements in which the first transaction is exempt[14] from charge[15].

Where a chargeable transaction[16] is entered into by an RTE company[17] in pursuance of a right of collective enfranchisement[18], the rate of tax is determined by reference to the fraction of the relevant consideration[19] produced by dividing the total amount of that consideration by the number of flats[20] in respect of which the right of collective enfranchisement is being exercised[21]. The tax chargeable is then determined by applying that rate to the chargeable consideration for the transaction[22].

1 For the meaning of 'land transaction', see PARA 1117A.1.

2 A registered social landlord is controlled by its tenants if the majority of its board members are tenants occupying properties owned or managed by it; and 'board member', in relation to a registered social landlord, means (1) if it is a company, a director of the company; (2) if it is a body corporate the affairs of which are managed by its members, a member; (3) if it is a body of trustees, a trustee; (4) if it is not within heads (1)-(3), a member of the committee of management or other body to which is entrusted the direction of the affairs of the registered social landlord: Finance Act 2003 s 71(2). For the meaning of 'registered social landlord', see PARA 1117A.6 NOTE 4. For the meaning of 'company', see PARA 1117A.15 NOTE 3.

3 'Qualifying body' means a registered social landlord, a housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (see HOUSING vol 22 (2006 Reissue) PARA 320), a principal council within the meaning of the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq) or the Common Council of the City of London: Finance Act 2003 s 71(3).

4 Ibid s 71(1). 'Public subsidy' means any grant or other financial assistance (1) made or given by way of a distribution pursuant to the National Lottery etc Act 1993 s 25; (2) under the Housing Act 1996 s 18 (see HOUSING vol 22 (2006 Reissue) PARA 66); (3) under the Housing Grants, Construction and Regeneration Act 1996 s 126 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1504); (4) under the Housing and Regeneration Act 2008 s 19 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1308A.3): Finance Act 2003 s 71(4)(a)-(ca) (s 71(4)(ca) added by Housing and Regeneration Act 2008 Sch 8 para 79). For the meaning of 'purchaser', and 'vendor' see PARA 1117A.2.

5 In relation to times after the death of a person, the term includes his personal representatives: Finance Act 2003 s 71A(9) (s 71A added by Finance Act 2005 Sch 8 para 2).

6 'Financial institution' has the meaning given by ibid s 46 (see INCOME TAXATION vol 23(1) (Reissue) PARA 1046A.1): Finance Act 2003 ss 71A(8), 73(5)(a) (amended by Finance Act 2007 s 75(3)).

7 For the meaning of 'major interest in land' see PARA 1117A.9 NOTE 9.

8 Such an agreement is not to be treated (1) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and, accordingly, the Finance Act 2003 s 44(5) (see PARA 1117A.3) does not apply); or (2) as a distinct land transaction by virtue of s 46 (see PARA 1117A.4): s 71A(5).

9 Ibid s 71A(1) (amended by Finance Act 2006 s 168). The Finance Act 2003 s 71A does not apply in relation to land in Scotland (see ss 72, 72A): s 71A(10). See also NOTE 11. An interest held by a financial institution as a result of the first transaction is an exempt interest for the purposes of stamp duty land tax: s 73B(1) (s 73B added by Finance Act 2007 s 75(1)). That interest ceases to be exempt if the lease mentioned in head (3) in the TEXT ceases to have effect, or the right within head (4) in the TEXT ceases to have effect or becomes subject to a restriction: Finance Act 2003 s 73B(2). However, s 73B(1) does not apply if the first transaction is exempt from tax by virtue of Sch 7; and that provision does not make an interest exempt in respect of the first transaction itself, or a further transaction or a third transaction within the meaning of head (c) of the TEXT: s 75B(3), (4).

Sections 71A, 72 and 72A do not apply to alternative finance arrangements if those arrangements, or any connected arrangements, include arrangements for a person to acquire control of the relevant financial institution (and this includes arrangements for a person to acquire control of the relevant financial institution only if one or more conditions are met (such as the happening of an event or the doing of an act): s 73AB(1), (2) (s 73AB added by Finance Act 2008 s 155). 'Alternative finance arrangements' means the arrangements refered to in the Finance Act 2003 s 71A(1), 72(1) or 72A(1); 'arrangements' includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable); 'connected arrangements' means any arrangements entered into in connection with the making of the alternative finance arrangements (including arrangements involving one or more persons who are not parties to the alternative finance arrangements); and 'relevant financial institution' means the financial institution which enters into the alternative finance arrangements: s 73AB(3). The Income and Corporation Taxes Act 1988 s 840 (see INCOME TAXATION) applies to determine who has control of the relevant financial institution: Finance Act 2003 s 73AB(4).

10 Ie ibid Pt 4 (ss 42-124): see PARAS 1117A.1 et seq, 1117A.25 et seq.

11 Ibid s 71A(2)-(4) (amended by Finance Act 2006 s 168). A further transaction that is exempt from charge by virtue of head (c) of the TEXT is not a notifiable transaction unless it involves the transfer to the person concerned of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction: Finance Act 2003 s 71A(7).

12 'Legal mortgage', in relation to land in England or Wales, means a legal mortgage as defined in the Law of Property Act 1925 s 205(1)(xvi) (see MORTGAGE vol 32 (2005 Reissue) PARA 304): Finance Act 2003 s 73(5)(b)(i).

13 Ibid s 73(1)-(3) (amended by Finance Act 2005 Sch 8 para 5(2); and Finance Act 2006 s 168). In relation to times after the death of the person concerned, the term includes his personal representatives: Finance Act 2003 s 73(5).

14 Ie by virtue of ibid Sch 7.

15 Ibid s 73A (added by Finance Act 2006 s 168).

16 For the meaning of 'chargeable transaction' see PARA 1117A.1.

17 'RTE company' has the meaning given by the Leasehold Reform, Housing and Urban Development Act 1993 s 4A (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1581): Finance Act 2003 s 74(4)(a).

18 'Right of collective enfranchisement' means the right exercisable by an RTE company under the Landlord and Tenant Act 1987 Pt I (ss 1-20) (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1744 et seq) or the Leasehold Reform, Housing and Urban Development Act 1993 Pt I Ch I (ss 1-38) (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1552): Finance Act 2003 s 74(4)(b). See *Elizabeth Court (Bournemouth) Ltd v Revenue and Customs Comrs* [2008] EWHC 2828 (Ch), [2009] STC 682.

19 For the meaning of 'relevant consideration', see Finance Act 2003 s 55; and PARA 1117A.11 NOTE 4.

20 'Flat' has the same meaning as in the provisions conferring the right of collective enfranchisement (see NOTE 14): ibid s 74(4)(c).

21 Ibid s 74(1), (2), (5).

22 Ibid s 74(3). For the meaning of 'chargeable consideration', see PARA 1117A.7 et seq.

## 25. Compliance; duty to deliver land transaction return

In the case of every notifiable transaction, the purchaser must deliver a return (a 'land transaction return') to the Inland Revenue[1] before the end of the period of 30 days beginning with the effective date[2] of the transaction[3]. A land transaction return in respect of a chargeable transaction[4] must include an assessment (a 'self-assessment') of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and a declaration by the purchaser (or each of them) that the return is to the best of his knowledge correct and complete[5].

A land transaction is notifiable if it is (1) an acquisition of a major interest in land that is not an excepted transaction[6]; (2) an acquisition of a chargeable interest other than a major interest in land where there is chargeable consideration in respect of which tax is chargeable at a rate of 1% or higher, or would be so chargeable but for a relief; (3) a land transaction that a person is treated as entering into under the provisions relating to third parties[7]; or (4) a notional land transaction[8].

Any other acquisition of a major interest in land is a notifiable transaction unless it is exempt, or unless the land consists entirely of residential property and the chargeable consideration for the acquisition, together with that of any linked transactions, is less than £1,000[9].

An acquisition of a chargeable interest other than a major interest in land is notifiable if there is chargeable consideration in respect of which tax is chargeable at a rate of 1 per cent or higher, or in respect of which tax would be so chargeable but for a relief[10].

A person who is required to deliver a land transaction return and fails to do so by the filing date[11] is liable to a penalty of £100 if the return is delivered within three months after the filing date, and £200 in any other case[12]. A purchaser who is required to deliver a land transaction return in respect of a chargeable transaction and fails to do so within 12 months after the filing date is liable to a tax-related penalty of an amount not exceeding the amount of tax chargeable in respect of the transaction[13].

If it appears to the Inland Revenue that a purchaser required to deliver a land transaction return in respect of a chargeable transaction has failed to do so, and that the filing date has passed, it may issue a notice requiring him to deliver a land transaction return in respect of the transaction[14].

The purchaser may amend a land transaction return made by him by notice to the Inland Revenue in such form, and containing such information, as the Inland Revenue may require[15]. The Inland Revenue may amend a land transaction return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise), and such correction must be made by notice to the purchaser[16].

Where a return delivered to the Inland Revenue, or any other document relating to tax made by or provided to the Inland Revenue, has been lost or destroyed, or been so defaced or damaged as to be illegible or otherwise useless, the Inland Revenue may treat the return as not having been delivered or the document as not having been made or provided[17].

In connection with the delivery of a land transaction return or to the making of any payment or repayment of tax or other sums in connection with such delivery, the Board may use electronic communications if the recipient has indicated his consent (and the Board has not been notified of its withdrawal); and a person other than the Board may only use electronic communications for such a purpose if (a) he is for the time being permitted to use such communications for the purpose in question by an authorisation given by means of a direction of the Board; (b) he uses (i) an approved method for authenticating the identity of the sender of the communication, (ii) an approved method of electronic communications, and (iii) an approved method for authenticating any information delivered by means of electronic communications; (c) any information or payment sent by means of such communications is in a form approved for the purpose; and (d) he maintains such records in written or electronic form as may be specified in a general or specific direction of the Board[18]. Information so delivered is treated as having been delivered in the appropriate manner or form if, but only if, all the relevant conditions[19] are satisfied; and information so delivered is treated as having been delivered on the day on which the last of those conditions is satisfied[20]. A document certified by an officer of the Board to be a printed-out version of any information so delivered on any occasion is evidence, unless the contrary is proved, that that information was so delivered on that occasion, and constituted the entirety thereof[21]. The use of an authorised method of electronic communications is presumed, unless the contrary is proved, to have resulted in the making of a payment or the delivery of information (i) in the case of information falling to be delivered, or a payment falling to be made, to the Board, if the making of the payment or the delivery of the information has been recorded on an official computer system; and (ii) in the case of information falling to be delivered, or a payment falling to be made, by the Board, if the despatch of that payment or information has been recorded on an official computer system[22].

Relevant information contained in land transaction returns is available for use for other purposes[23].

1 For the meaning of 'Inland Revenue', see PARA 1117A.3 NOTE 6.

2 For the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

3 Finance Act 2003 s 76(1). Where there are two or more linked transactions with the same effective date, the purchaser, or all of the purchasers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction: s 108(2). For the meaning of 'linked transaction', see PARA 1117A.4 NOTE 7. The Inland Revenue may by regulations amend s 76(1) so as to require a land transaction return to be delivered before the end of such shorter period after the effective date of the transaction as may be prescribed or, if the regulations so provide, on that date: s 76(2). As to the making of such regulations see PARA 1117A.2 NOTE 5.

4 For the meaning of 'chargeable transaction', see PARA 1117A.1.

5 Finance Act 2003 ss 76(3), 78, Sch 10 para 1(1)(c) (s 76(3) amended by Finance Act 2007 s 80(2)). The requirement that an individual make such a declaration (alone or jointly with others) is treated as met if a declaration to that effect is made by a person authorised to act on behalf of that individual in relation to the matters to which the return relates: Finance Act 2003 s 81B(1), (2) (s 81B added by Finance Act 2004 Sch 39 para 20; amended by Finance Act 2008 Sch 30 para 3). A person is not regarded for this purpose as authorised to act on an individual's behalf unless he is so authorised by a power of attorney in writing, signed by that individual: Finance Act 2003 s 81B(3). Nothing in s 81B affects the making of a declaration in accordance with s 100(2) (see PARA 1117A.36) or s 106(1), (2) (see PARA 1117A.36): s 81B(4). Where (1) the purchaser (or each of them) authorises an agent to complete a land transaction return; (2) the purchaser (or each of them) makes a declaration that, with the exception of the effective date, the information provided in the return is to the best of his knowledge correct and complete; and (3) the return includes a declaration by the agent that the effective date provided in the return is to the best of his knowledge correct, the requirement is deemed to be met, but only where the return is in a form specified by the Inland Revenue for the purpose: Sch 10 para 1A(1), (2) (Sch

10 paras 1A, 1B added by SI 2004/3208). Nothing in this provision affects the liability of the purchaser (or each of them) to stamp duty land tax: Finance Act 2003 Sch 10 para 1A(3).

Where the purchaser (or any of them) is a person under a disability, the Official Solicitor is acting for the purchaser (or any of them), and the land transaction return includes a declaration by the Official Solicitor that the return is to the best of his knowledge correct and complete, the requirement to make a declaration is deemed to be met, but again only where the return is in a form specified by the Inland Revenue for the purpose: Sch 10 para 1B(1), (2). Nothing in this provision affects the liability of the purchaser (or each of them) to stamp duty land tax: Sch 10 para 1B(3) (Sch 10 para 1B as so added). The 'Official Solicitor' means the Official Solicitor to the Supreme Court of England and Wales: Sch 10 para 1B(4).

A land transaction return must also be in the form and contain the information prescribed by regulations made by the Inland Revenue: Sch 10 para 1(1)(a), (b), (2). Such regulations may make different provision for different kinds of return, and may require the provision of information corresponding to any of the particulars formerly required under the Finance Act 1931 Sch 2 (see PARA 1026) or the Finance Act 1994 s 244: Finance Act 2003 Sch 10 para 1(3), (4). The return is treated as containing any information provided by the purchaser for the purpose of completing the return: Sch 10 para 1(5). As to the making of such regulations, see PARA 1117A.2 NOTE 5. See Stamp Duty Land Tax (Administration) Regulations 2003, SI 2003/2837; and PARA 1117A.2 NOTE 5.

6 The excepted transactions are (1) an acquisition which is exempt from charge under the Finance Act 2003 Sch 3; (2) an acquisition (other than the grant, assignment or surrender of a lease) where the chargeable consideration for that acquisition, together with the chargeable consideration for any linked transactions, is less than £40,000; (3) the grant of a lease for a term of seven years or more where any chargeable consideration other than rent is less than £40,000, and the relevant rent is less than £1,000; (4) the assignment or surrender of a lease where the lease was originally granted for a term of seven years or more and the chargeable consideration for the assignment or surrender is less than £40,000; (5) the grant of a lease for a term of less than seven years where the chargeable consideration does not exceed the zero rate threshold; and (6) the assignment of a lease where the lease was originally granted for a term of less than even years, and the chargeable consideration for the assignment or surrender does not exceed the zero rate threshold: s 77A(1) (s 77A added by Finance Act 2008 s 94). Chargeable consideration for an acquisition does not exceed the zero rate threshold if it does not consist of or include: (a) any amount in respect of which tax is chargeable at a rate of 1% or higher, or (b) any amount in respect of which tax would be so chargeable but for a relief: Finance Act 2003 s 77A(2). 'Relevant rent' means the annual rent or, in the case of the grant of a lease to which Sch 15 para 11 or 19 (see PARA 1117A.38) applies, the relevant chargeable proportion of the annual rent (as calculated in accordance with that provision); and 'relief' does not include an exemption from charge under Sch 3 (see PARA 1117A.6): s 77A(3). 'Annual rent' has the meaning given by Sch 5 para 9A (see PARA 1117A.12): s 77A(3). For the meaning of 'rent', see PARA 1117A.8.

7 Ie ibid s 44A(3): see PARA 1117A.3.

8 2003 Act s 77(1), (2) (s 77 substituted by Finance Act 2008 s 94). 'Relief' does not include any exemption from charge under the Finance Act 2003 Sch 3 (see PARA 1117A.6): s 77(3). As to reliefs generally, see PARA 1117A.13 et seq. 'Notional land transaction' means a transaction under s 75A (see PARA 1117A.42): see s 77(1)(d).

9 Ibid s 77(3) (amended by Finance Act 2004 s 298(2)(b)). For the meaning of 'major interest in land', see PARA 1117A.9 NOTE 9. For the meaning of 'major interest in land', see PARA 1117A.9 NOTE 9; and for the meaning of 'acquisition', see PARA 1117A.2. As to exemptions, see PARA 1117A.6. For the meaning of 'residential property', see PARA 1117A.11; and for the meaning of 'linked transaction', see PARA 1117A.4.

A transaction which is a chargeable transaction by virtue of Sch 15 para 14 or 17 (see PARA 1117A.38) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the zero-rate threshold; and there is such an excess if either (1) the relevant consideration for the purposes of s 55 (see PARA 1117A.11) is such that the rate of tax chargeable under that provision is 1per cent or higher; and/or (2) the relevant rental value for the purposes of Sch 5 (see PARA 1117A.12) is such that the rate of tax chargeable under that Schedule is 1 per cent or higher: Sch 15 para 30 (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

10 Finance Act 2003 s 77(4).

11 The filing date, in relation to a land transaction return, is the last day of the period within which the return must be delivered; and references to the delivery of a land transaction return are to the delivery of a return that complies with the requirements of ibid Sch 10 para 1(1): Sch 10 para 2 (amended by 2007 Act s 80(7)).

12 Ibid Sch 10 para 3. He may also be liable to a tax-related penalty (see TEXT AND NOTE 12). As to penalties generally, see PARA 1117A.35.

13 Ibid Sch 10 para 4. This is in addition to any flat-rate penalty under Sch 10 para 3 (see NOTE 11). For the meaning of 'purchaser' see PARA 1117A.2.

14 Ibid Sch 10 para 5(1). The notice must specify the transaction to which it relates, and the period for complying with the notice, which must not be less than 30 days from the date of issue of the notice: Sch 10 para 5(2). If the purchaser does not comply with the notice within the specified period, the Inland Revenue may apply to the tribunal (see INCOME TAXATION) for an order imposing a daily penalty; and on such an application, the Commissioners may direct that the purchaser is liable to a penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which he is notified of the direction: Sch 10 para 5(3), (4) (amended by SI 2009/56). The Finance Act 2003 Sch 10 para 5 does not affect, and is not affected by, any penalty under Sch 10 para 3 or 4: Sch 10 para 5(5). For the meaning of 'Inland Revenue' see PARA 1117A.3.

15 Ibid Sch 10 para 6(1), (2). Except as otherwise provided, an amendment may not be made more than 12 months after the filing date: Sch 10 para 6(3). If the effect of the amendment would be to entitle the purchaser to a repayment of tax, the notice must be accompanied by the contract for the land transaction, and the instrument (if any) by which that transaction was effected: Sch 10 para 6(2A) (added by SI 2004/3208).

16 Finance Act 2003 Sch 10 para 7(1), (2). The power of amendment may, in such circumstances as may be specified in regulations made by the Inland Revenue, be exercised by the Chief Land Registrar and by such other persons with functions relating to the registration of land as the regulations may specify: Sch 10 para 7(1A) (added by Finance (No 2) Act 2005 s 47(4)). No such correction may be made more than nine months after the day on which the return was delivered or, if the correction is required in consequence of an amendment under the Finance Act 2003 Sch 10 para 6, the day on which that amendment was made: Sch 10 para 7(3). Such a correction is of no effect if the purchaser amends the return so as to reject the correction, or after the end of the period within which he may amend the return (see NOTE 14), but within three months from the date of issue of the notice of correction, gives notice rejecting the correction: Sch 10 para 7(4). Such notice must be given to the officer of the Board by whom notice of the correction was given: Sch 10 para 7(5). The Treasury may by regulations make such amendments of Sch 10 and such consequential amendments of any other provisions of the Finance Act 2003 Pt 4 (ss 42-124) (see PARAS 1117A.1, 1117A.26 et seq), as appear to it to be necessary or expedient from time to time: s 78(3). As to the making of such regulations, see PARA 1117A.2 NOTE 5.

17 Ibid s 82(1), (2). Anything done on that basis is as valid and effective for all purposes as it would have been if the return had not been made or the document had not been made or provided; but if as a result a person is charged with tax and he proves to the satisfaction of the tribunal having jurisdiction in the case that he has already paid tax in respect of the transaction in question, relief must be given by reducing the charge, or by repayment, as the case may require: s 82(3), (4) (s 82(4) amended by SI 2009/56).

18 Stamp Duty Land Tax (Electronic Communications) Regulations 2005, SI 2005/844, regs 1, 2, 3(3)-(6). References to the delivery of information include references to (1) the production or furnishing to a person of any information, account, record or document; (2) the giving, making, issue or surrender to, or service on, any person of any notice, notification, statement, declaration certificate or direction; (3) the imposition on any person of any requirement or the issue to any person of any request; (4) the making of any return, claim, election or application; (5) the amendment or withdrawal of anything mentioned in heads (1)-(4): Finance Act 1999 s 132(8); SI 2005/844 reg 1(3). 'Form' in head (3) of the TEXT includes the manner in which the information is presented; and 'approved' in head (4) of the TEXT means approved for the purposes of SI 2005/844 for the time being, by means of a general or specific direction of the Board: reg 3(5), (6). See the directions issued on 13 July 2005 and on 13 July 2005: see [2005] STI 1252. The Board may use intermediaries in connection with (a) the delivery of information or the making of payments or repayments by means of electronic communications in connection with the matters referred to in the TEXT, and (b) the authentication or security of anything transmitted by such means, and may require other persons to do the same: reg 4. Any information delivered by an approved method of electronic communications on behalf of any person is deemed to have been delivered by him unless he proves that it was delivered without his knowledge or connivance: SI 2005/844 reg 8. As to the Board, see PARA 1117A.1.

19 Ie the conditions imposed by SI 2005/844, any other applicable enactment (so far as compatible with SI 2005/844) and any specific or general direction given by the Board: reg 5(1).

20 Ibid reg 5(1), (2). The Board may by a general or specific direction provide for information to be treated as delivered on a different date (whether earlier or later); and information is not taken to have been delivered to an official computer system by means of electronic communications unless it is accepted by the system to which is delivered: reg 5(3), (4). 'Official computer system' means a computer system maintained by or on behalf of the Board to send or receive information or payments, or to process or store information: reg 1(2). The identity of the sender of any information so delivered or the recipient of such information is presumed, unless the contrary is proved, to be the person recorded as such on an official computer system: reg 7.

21 Ibid reg 6(1). A document purporting to be a certificate given in accordance with this provision is presumed to be such a certificate unless the contrary is proved: reg 6(2).

22 Ibid reg 9(1). If the making (or, as the case may be, the dispatch) of the payment or the delivery (or dispatch) of the information has not been so recorded, it is presumed, unless the contrary is proved, that no payment has been made and no information delivered: reg 9(2). The use of a means of electronic communications, for the purpose of delivering any information to the Board as required by SI 2005/844, is conclusively presumed not to have resulted in the delivery of that information unless that means of electronic communications is for the time being approved for delivery of information of that kind, and the sender is approved for the uses of that means of electronic communications in relation to information of that kind: reg 10.

The time of receipt of any information or payment sent by an authorised means of electronic communications is presumed, unless the contrary is proved, to be that recorded on an official computer system: reg 9(3).

23 Finance Act 2003 s 78A(1) (s 78A added by Finance (No 2) Act 2005 s 48(1); and amended, as from 1 October 2009 (see SI 2008/3110), by Local Government and Public Involvement in Health Act 2007 Sch 16 para 9, Sch 18 Pt 17). The information may be supplied (1) to officers appointed under the Local Government Finance Act 1992 s 20 (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 230) for the purpose of facilitating the compilation and maintenance by them of valuation lists in accordance with Pt I Ch II (ss 20-29); (2) as evidence in an appeal by virtue of s 24(6) (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 273) to a valuation tribunal; and (3) by such other persons and for such other purposes as the Treasury may by regulations prescribe: Finance Act 2003 s 78A(1). Subject to any amendment made by Treasury order, 'relevant information' means any information of the kind mentioned in the Finance Act 2003 Sch 10 para 1(4): s 78A(2), (3). In s 78A 'valuation tribunal' means (a) in relation to England: the Valuation Tribunal for England; (b) in relation to Wales: a valuation tribunal established under the Local Government Finance Act 1988 Sch 11 para 1: Finance Act 2003 s 78A(4) (added by Local Government and Public Involvement in Health Act 2007 Sch 16 para 9(3)). The Finance Act 2003 s 114(3) (see PARA 1117A.2) does not apply to an order bringing these provisions into force: Finance (No 2) Act 2005 s 48(6).

## 26. Compliance; duty to keep and preserve records

A purchaser who is required to deliver a land transaction return must keep such records as may be needed to enable him to deliver a correct and complete return, and preserve those records for six years after the effective date[1] of the transaction and until any later date on which an inquiry[2] into the return is completed or, if there is no inquiry, the Inland Revenue no longer has power to inquire into the return[3]. The records required to be so kept and preserved include relevant instruments relating to the transaction, in particular any contract or conveyance and any supporting maps, plans or similar documents, and records of relevant payments, receipts and financial arrangements[4].

A person who fails to comply with the above provisions in relation to a transaction is liable to a penalty not exceeding £3,000. However, no penalty is incurred if the Inland Revenue is satisfied that any fact that it reasonably requires to be proved, and that would have been proved by the records, are supported by other documentary evidence provided to it[5].

1 For the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

2 As to inquiries, see PARA 1117A.27.

3 Finance Act 2003 s 78, Sch 10 para 9(1), (2). For the meaning of 'purchaser', see PARA 1117A.2, and for the meaning of 'Inland Revenue', see PARA 1117A.3 NOTE 6. For the meaning of 'land transaction return', see PARA 1117A.25. As from a day to be appointed, Finance Act 2003 Sch 10 para 9 amended: Finance Act 2009 Sch 50 para 5.

4 Ibid Sch 10 para 9(3). This duty to preserve records may be satisfied by the preservation of the information contained therein; and where information is so preserved, a copy of any document forming part of the records is admissible in evidence in any proceedings before the tribunal (see INCOME TAXATION) to the same extent as the records themselves: Sch 10 para 10 (amended by SI 2009/56). As from a day to be appointed, Finance Act 2003 Sch 10 para 9 amended, Sch 10 para 10 substituted: Finance Act 2009 Sch 50 paras 5, 6.

5 Finance Act 2003 Sch 10 para 11. As to the Treasury's power to amend Sch 10 by regulations, see PARA 1117A.25 NOTE 16. As to penalties generally, see PARA 1117A.35.

## 27. Compliance; inquiry into return

The Inland Revenue may inquire into a land transaction return if it gives notice of its intention to do so ('notice of inquiry') to the purchaser before the end of the inquiry period[1]. The 'inquiry period is the end of the period of nine months:

299 (1) after the filing date[2], if the return was delivered on or before that date;
300 (2) after the date on which the return was delivered, if the return was delivered after the filing date;
301 (3) after the date on which the amendment was made[3], if the return is amended[4].

An inquiry extends to anything contained in the return, or required to be contained therein, that relates to the question whether tax is chargeable in respect of the transaction, or the amount of tax so chargeable; but if the notice of inquiry is given as a result of an amendment of the return at a time when it is no longer possible to give notice of inquiry into the original return[5], or after such an inquiry has been completed, the inquiry is limited to matters to which the amendment relates or that are affected by the amendment[6].

If notice of inquiry is given, the Inland Revenue may, by notice in writing, require the purchaser to produce to it such documents in his possession or power, and to provide it with such information, in such form, as it may reasonably require for the purposes of the inquiry[7]. However, such a notice does not oblige a purchaser to produce documents or provide information relating to the conduct of any pending appeal by him or any pending referral[8] to the tribunal[9]. An appeal may be brought against a requirement imposed by a notice under these provisions. Notice of such an appeal must be given in writing to the officer of Revenue and Customs by whom the notice appealed against was issued, within 30 days after the issue of the latter notice, and such an appeal is heard and determined in the same way as an appeal against an assessment[10].

A person who fails to comply with a notice to produce documents or provide information is liable to a penalty of £50 and, if the failure continues after such a penalty is imposed, to a further penalty or penalties not exceeding £30 (if it is determined by an officer of the Board) or £150 (if it is determined by the court) for each day on which the failure continues[11].

If at a time when any inquiry is in progress, the Inland Revenue forms the opinion that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient and that, unless the assessment is immediately amended, there is likely to be a loss of tax to the Crown, it may, by notice in writing to the purchaser, amend the assessment to make good the deficiency[12].

At any time when an inquiry is in progress, any question arising in connection with the subject matter of the inquiry may be referred to the tribunal for its determination. Notice of referral must be given in writing to the tribunal, jointly by the purchaser and the Inland Revenue, and must specify the question or questions being referred[13]. The determination of a question so referred is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal; and the determination must be taken into account by the Inland Revenue is reaching its conclusions on the inquiry and in formulating any amendments of the return required to give effect to those conclusions[14].

An inquiry is completed when the Inland Revenue by notice (a 'closure notice') informs the purchaser that it has completed its inquiries and states its conclusions. A closure notice must state either that, in the opinion of the Inland Revenue, no amendment of the return is required, or make the amendments of the return required to give effect to its conclusions[15]. The purchaser may apply to the tribunal for a direction that give a closure notice within a specified period[16].

1 Finance Act 2003 s 78, Sch 10 para 12(1). For the meaning of 'Inland Revenue', see PARA 1117A.3; and for the meaning of 'purchaser', see PARA 1117A.2; and for the meaning of 'land transaction return', see PARA 1117A.25.

2 For the meaning of 'filing date', see PARA 1117A.25 NOTE 10.

3 Ie any amendment under the Finance Act 2003 Sch 10 para 6: see PARA 1117A.25.

4 Ibid Sch 10 para 12(2), (3). As to the delivery of the return see PARA 1117A.25 NOTE 10.

However, if the Inland Revenue gives notice, within the inquiry period, of its intention to inquire into a land transaction return delivered under s 80 (see PARA 1117A.10), s 81 (see PARA 1117A.22), or s 81A (see PARA 1117A.4), and it appears to it to be necessary to give notice under Sch 10 para 12 in respect of an earlier land transaction return in respect of the same transaction, such notice may be given notwithstanding that the inquiry period in relation to that earlier transaction has elapsed: Sch 10 para 12(2), (2A) (Sch 10 para 12(2) amended, Sch 10 para 12(2A) added, by SI 2004/3208).

5 Ie the time limit under the Finance Act 2003 Sch 10 para 12 has expired.

6 Ibid Sch 10 para 13. If a return is amended under Sch 10 para 6 at a time when an inquiry is in progress into the return, the amendment does not restrict the scope of the inquiry, but may be taken into account (together with any matters arising) in the inquiry: Sch 10 para 18(1), (2). So far as the amendment affects the amount stated in the self-assessment included in the return as the amount of tax payable, it does not take effect while the inquiry is in progress, and if the Inland Revenue states in the closure notice that it has taken the amendment into account and that (1) the amendment has been taken into account in formulating the amendments contained in the notice, or (2) its conclusion is that the amendment is incorrect, the amendment does not take effect. Otherwise, the amendment takes effect when the closure notice is issued: Sch 10 para 18(3). The period during which an inquiry is in progress is the whole of the period beginning with the day on which notice of inquiry is given and ending with the day on which the inquiry is completed: Sch 10 paras 17(3), 18(4), 19(5). For the meaning of 'closure notice', see.

7 Ibid Sch 10 para 14(1). Such a notice (which may be given at the same time as the notice of inquiry) must specify the time, not being less than 30 days, within which the purchaser must comply with it: Sch 10 para 14(2). In complying with such a notice, copies of documents may be produced instead of originals, but the copies must be photographic or other facsimiles, and the Inland Revenue may, by further notice, require the original to be produced for inspection. Such a notice must specify the time (not being less than 30 days) within which the purchaser is to comply with it: Sch 10 para 14(3). The Inland Revenue may take copies of, or make extracts from, any documents produced to it under these provisions: Sch 10 para 14(4).

8 Ie referral under ibid Sch 10 para 19.

9 Ibid Sch 10 para 14(5) (amended by SI 2009/56). As to the tribunal see INCOME TAXATION. The Taxes Management Act 1970 Pt I (ss 1-6) (see INCOME TAXATION) apply as if the Finance Act 2003 ss 42-124 (see PARAS 1117A.1 et seq, 1117A.28 et seq) were part of the Taxes Acts: Sch 17 para 1.

10 Ibid Sch 10 para 15(1)-(3) (Sch 10 para 15(2) amended by virtue of Commissioners for Revenue and Customs Act 2005 s 50(2), (7); Finance Act 2003 Sch 10 para 15(3) amended by SI 2009/56). As to appeals against assessments, see PARA 1117A.29. On such an appeal, the tribunal must set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the inquiry, but otherwise must confirm the notice: Finance Act 2003 Sch 10 para 15(4) (amended by SI 2009/56). If and in so far as it is so confirmed, the notice has effect as if the period specified in it for compliance were 30 days from the date of determination of the appeal: Sch 10 para 15(5) (amended by SI 2009/56). Notwithstanding the provisions of the Tribunals, Courts and Enforcement Act 2007 ss 11 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7), 13 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.8), the decision of the tribunal is final: Sch 10 para 15(6) (substituted by SI 2009/56).

11 Finance Act 2003 Sch 10 para 16(1), (2). No such penalty may be imposed in respect of a failure at any time after that failure has been remedied: Sch 10 para 16(3). As to penalties generally, see PARA 1117A.35.

12 Ibid Sch 10 para 17(1). In the case of an inquiry that under Sch 10 para 13(2) is limited to matters arising from an amendment of the return, Sch 10 para 17(1) applies only so far as the deficiency is attributable to the amendment: Sch 10 para 17(2). As to the period during which an inquiry is in progress, see NOTE 6. For the meaning of 'self-assessment', see PARA 1117A.25.

13 Ibid Sch 10 para 19(1), (2) (amended by SI 2009/56). More than one notice of referral may be so given in relation to an inquiry: Finance Act 2003 Sch 10 para 19(4). As to the period during which an inquiry is in progress, see NOTE 6.

The Inland Revenue or the purchaser may withdraw a notice of referral under Sch 10 para 19: Sch 10 para 20 (amended by SI 2009/56).

While proceedings on a referral are in progress in relation to an inquiry, no closure notice may be given in respect of the inquiry, and no application may be made for a direction to give such a notice: Sch 10 para 21(1). For this purpose, proceedings on a referral are in progress where notice of referral has been given and not withdrawn, and the questions have not been finally determined. A question referred is finally determined when it has been determined by the tribunal, and there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time): Sch 10 para 21(2), (3) (Sch 10 para 21(3) amended by SI 2009/56).

14 Finance Act 2003 Sch 10 para 22(1) (amended by SI 2009/56). Any right of appeal under the Finance Act 2003 Sch 10 para 35 (see PARA 1117A.29) may not be exercised so as to reopen the question so determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal: Sch 10 para 22(2), (3).

15 Ibid Sch 10 para 23(1), (2). A closure notice takes effect when it is issued: Sch 10 para 23(3).

16 Ibid Sch 10 para 24(1) (amended by SI 2009/56). The tribunal must give a direction unless satisfied that the Inland Revenue has reasonable grounds for not giving a closure notice within a specified period: Finance Act 2003 Sch 10 para 24(3). As to the tribunal see INCOME TAXATION. See also NOTE 9. As to the Treasury's power to amend Sch 10 by regulations, see PARA 1117A.25 NOTE 16.

## 28. Compliance: determination and assessments

If, in the case of a chargeable transaction[1], no land transaction return is delivered by the filing date, the Inland Revenue may make a determination (a 'Revenue determination') to the best of its information and belief of the amount of tax chargeable in respect of the transaction[2]. Notice of the determination must be served on the purchaser stating the date on which it is issued; but no determination may be made more than six years after the effective date of the transaction[3]. Such a determination has effect for enforcement purposes[4] as if it were a self-assessment by the purchaser, but this does not affect any liability of the purchaser to a penalty for failure to deliver a return[5].

If after a Revenue determination has been made, the purchaser delivers a land transaction return in respect of the transaction, the self-assessment included in that return supersedes the determination, but this provision does not apply to a return delivered more than six years after the day on which the power to make the determination first became exercisable, or more than 12 months after the date of the determination, whichever is the later[6].

If the Inland Revenue discovers, as regards a chargeable transaction, that an amount of tax that ought to have been assessed has not been assessed, that an assessment to tax has become insufficient, or that relief has been given that is or has become excessive, it may make an assessment (a 'discovery assessment') in the amount or further amount that ought, in its opinion, to be charged in order to make good to the Crown the loss of tax[7]. Similarly, if an amount of tax has been repaid to any person that ought not to have been repaid to him, that amount, together with any interest paid on the repayment, may be assessed and recovered as if it were unpaid tax[8]. However, if the purchaser has delivered a land transaction return in respect of the transaction in question, an assessment under either of these provisions may only be made:

302 (1) where the situation is attributable to fraudulent or negligent conduct on the part of the purchaser, a person acting on his behalf, or a person who was a partner of the purchaser at the relevant time; or

303 (2) where the Inland Revenue, at the time it ceased to be entitled to give a notice of inquiry into the return, or completed its inquiries into the return, could not have been reasonably expected, on the basis of the information made available[9] to it before that time, to be aware of the situation[10].

Notice of an assessment must be served on the purchaser stating the tax due, the date on which the notice is issued, and the time within which any appeal against the assessment must be made[11].

The general rule is that no assessment may be made more than six years after the effective date of the transaction to which it relates, but in a case involving fraud or negligence on the part of the purchaser, a person acting on his behalf, or a person who was a partner of the purchaser at the relevant time, an assessment may be made up to 21 years after the effective date of the transaction to which it relates[12].

A person who believes he has been assessed to tax more than once in respect of the same matter may make a claim for relief[13]. Similarly, a person who believes he has paid tax under an assessment that was excessive by reason of some mistake in a land transaction return may, not more than six years after the effective date of the transaction, make a claim for relief[14].

An assessment, determination, notice or other document required to be used in assessing, charging, collecting and levying tax or determining a penalty must be in accordance with the forms prescribed from time to time by the Board and a document in the form so prescribed and supplied or approved by the Board is valid and effective[15]. A notice or other document to be served on a person may be delivered to him or left at his usual or last known place of abode; and a notice or other document to be given, served or delivered may be served by[16].

1 For the meaning of 'chargeable transaction', see PARA 1117A.1.

2 Finance Act 2003 s 78, Sch 10 para 25(1). For the meaning of 'land transaction return', see PARA 1117A.25; and for the meaning of 'filing date' and 'delivery', see PARA 1117A.25 NOTE 10. For the meaning of 'Inland Revenue', see PARA 1117A.3 NOTE 6.

3 Ibid Sch 10 para 25(2), (3). For the meaning of 'purchaser', see PARA 1117A.2; and for the meaning of 'effective date', see PARA 1117A.3 NOTE 5. As from a day to be appointed, no determination may be made more than four years after the effective date of the transaction: Finance Act 2003 Sch 10 para 25(3) (amended by Finance Act 2009 Sch 51 para 15(2)).

4 Ie for the purposes of the Finance Act 2003 s 87 (see PARA 1117A.31), s 91 and Sch 12 (see PARA 1117A.32) and such provisions of Sch 10 as provide for tax-related penalties.

5 Ibid Sch 10 para 26. For the meaning of 'self-assessment', see PARA 1117A.25. As to penalties generally, see PARA 1117A.35.

6 Ibid Sch 10 para 27(1), (2). As from a day to be appointed, the period of six years is reduced to four: Sch 10 para 27(1) (amended by Finance Act 2009 Sch 51 para 15(3)). Where proceedings have been begun for the recovery of any tax charged by a Revenue determination and, before the proceedings are concluded, the determination is superseded by a self-assessment, the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not been paid: Finance Act 2003 Sch 10 para 27(3).

7 Ibid Sch 10 para 28(1). A discovery assessment or, as the case may be, an assessment to recover an excessive repayment, may be made by the Board or an officer of the Board: s 113(3)(a), but this does not affect any of the stamp duty land tax provisions that expressly confers functions on the Board, an officer of the Board, a collector, or a specific officer of the Board: s 113(4). As to the Board, see PARA 1117A.1.

8 Ibid Sch 10 para 29(1). See also NOTE 7.

9 Information is regarded for this purpose as made available to the Inland Revenue if (1) it is contained in a land transaction return made by the purchaser; (2) it is contained in any documents produced or information provided to the Inland Revenue for the purposes of an inquiry into any such return; or (3) it is information the existence of which, and the relevance of which as regards the situation in question, could reasonably be expected to be inferred by the Inland Revenue from information falling within head (1) or (2), or are notified in writing to the Inland Revenue by the purchaser or a person acting on his behalf: ibid Sch 10 para 30(4).

10 Ibid Sch 10 paras 28(2), 29(3), 30(1)-(3). No such assessment may be made if the situation in question is attributable to a mistake in the return as to the basis on which the tax liability ought to have been computed; and the return was in fact made on the basis of, or in accordance with, the practice generally prevailing at the time it was made: Sch 10 para 30(5). For the meaning of 'notice of inquiry', see PARA 1117A.27.

11 Ibid Sch 10 para 32(1), (2). Where an officer of the Board has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, he may entrust to some other officer of the Board responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment: Sch 10 para 32(4). After a notice of assessment has been served on the purchaser, the assessment may not be altered except in accordance with the express provisions of the Finance Act 2003 Pt 4 (ss 42-124) (see PARAS 1117A.1 et seq, 1117A.29 et seq): Sch 10 para 32(3).

12 Ibid Sch 10 para 31(1), (2). As from a day to be appointed, the period of six years is reduced to four, and an assessment of a person to tax in a case involving a loss of tax brought about carelessly by the purchaser or a related person may be made at any time not more than six years after the effective date of the transaction to which it relates, but an assessment of a person to tax in a case involving a loss of tax brought about deliberately by the purchaser or a related person, attributable to a failure by the person to comply with an obligation under s 76(1) (see PARA 1117A.25) or Sch 17A para 3(3)(a), 4(3)(a) or 8(3)(a) (see PARA 1117A.4), or attributable to arrangements in respect of which the person has failed to comply with an obligation under the Finance Act 2004 s 309, 310 or 313 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1569A), may be made at any time not more than 20 years after the effective date of the transaction to which it relates: Finance Act 2003 Sch 10 para 31(1), (2), (2A) (Sch 10 para 31(1) amended, Sch 10 para 31(2), (2A) substituted, by Finance Act 2009 Sch 51 para 15(5), (6)). As to who is a related person see the Finance Act 2003 Sch 10 para 31(6) (added by Finance Act 2009 Sch 51 para 15(8) (not yet in force)). As to losses brough about carelessly or deliberately see the Finance Act 2003 Sch 10 para 31A (added by Finance Act 2009 Sch 51 para 15(9) (not yet in force)).

An assessment under the Finance Act 2003 Sch 10 para 29 is not out of time (1) in a case where notice of inquiry is given into the land transaction return delivered by the person concerned, if it is made before the inquiry is completed; (2) in any case, if it is made within one year after the repayment in question was made: Sch 10 para 31(3). Where the purchaser has died, any assessment on his personal representatives must be made within three years after his death, and an assessment may not be made by virtue of Sch 10 para 31(2) in respect of a transaction of which the effective date was more than six years before the death: Sch 10 para 31(4). As from a day to be appointed, the period of three years is increased to four: Sch 10 para 31(4) (amended by Finance Act 2009 Sch 51 para 15(7)).

Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on an appeal against the assessment: Finance Act 2003 Sch 10 para 31(5). As to appeals generally, see PARA 1117A.29.

13 Ibid Sch 10 para 33(1) (amended by Finance Act 2004 s 299(7)(a)). As to such claims made otherwise than by an amendment to a return, see PARA 1117A.41. The powers under the Finance Act 2003 Sch 10 para 33 are exercisable only by the Board (see PARA 1117A.1), but this does not affect any of the stamp duty land tax provisions that expressly confers functions on the Board, an officer of the Board, a collector, or a specific officer of the Board: s 113(4). An appeal may be made against a decision on a claim for relief under Sch 10 para 33: Sch 10 para 33(4) (substituted by SI 2009/56).

14 Finance Act 2003 Sch 10 para 34(1), (2) (amended by Finance Act 2004 s 299(8)). As from a day to be appointed, the period of six years is reduced to four: Finance Act 2003 Sch 10 para 34(1) (amended by Finance Act 2009 Sch 51 para 15(10)). As to such claims made otherwise than by an amendment to a return, see PARA 1117A.41. The powers under the Finance Act 2003 Sch 10 para 34 are exercisable only by the Board (see PARA 1117A.1), but this does not affect any of the stamp duty land tax provisions that expressly confers functions on the Board, an officer of the Board, a collector, or a specific officer of the Board: s 113(4). No relief may be given under Sch 10 para 34 (1) in respect of a mistake as to the basis on which the liability of the claimant ought to have been computed when the return was in fact made on the basis or in accordance with the practice generally prevailing at the time it was made; or (2) in respect of a mistake in a claim or election included in the return: Sch 10 para 34(4).

In determining a claim under Sch 10 para 34, the Inland Revenue must have regard to all the relevant circumstances of the case and, in particular, must consider whether the granting of relief would result in amounts being excluded from charge to tax: Sch 10 para 34(5). On appeal against the Inland Revenue's decision on the claim, that is notified to the tribunal, the tribunal must and determine the claim in accordance with similar principles: Sch 10 para 34(6) (amended by SI 2009/56).

As to the Treasury's power to amend the Finance Act 2003 Sch 10 by regulations, see PARA 1117A.25 NOTE 16.

15 Ibid s 83(1). However, any such assessment, determination, notice or other document purporting to be made under Pt 4 (ss 42-124) (see PARAS 1117A.1 et seq, 1117A.29 et seq) is not ineffective for want of form or by reason of any mistake, defect or omission, if it is substantially in conformity with those provisions and its intended effect is reasonably ascertainable by the person to whom it is directed: s 83(2). Similarly, the validity of an assessment or determination is not affected by any mistake therein as to the name of a person liable, or the amount of tax charged; or by reason of any variance between the notice of assessment or determination and the assessment or determination itself: s 83(3).

16 Ibid s 84(1), (2). For the purposes of the Interpretation Act 1978 s 7, any such notice or other document to be given or delivered to, or served on, any person by the Inland Revenue is properly addressed if it is addressed to that person (1) in the case of an individual, at his usual or last known place of residence or his place of business; (2) in the case of a company, at (a) its principal place of business, (b) if a liquidator has been appointed, at his address for the purposes of the liquidation; or (c) at any place prescribed by regulations made by the Inland Revenue: Finance Act 2003 s 84(3).

## 29. Appeals

An appeal may be brought against:

304 (1) an amendment of a self-assessment[1];
305 (2) a conclusion stated or amendment made by a closure notice[2];
306 (3) a discovery assessment[3];
307 (4) an assessment[4].

Notice of appeal must be given in writing to the relevant officer of the Board, within 30 days of the specified date, and must specify the grounds of appeal[5].

If, before an appeal is determined, the appellant and the Inland Revenue agree that the decision appealed against should be upheld, varied in a particular manner, discharged or cancelled, the same consequences follow, for all purposes, as would have followed if, at the time the agreement was reached, the tribunal had determined the appeal and had come to a similar decision[6]. Where the agreement is not in writing, the fact that agreement has been reached, and the terms agreed, must be confirmed by notice in writing given by the Inland Revenue to the appellant, or by the appellant to the Inland Revenue, and the time when such notice is given is treated as the time when the agreement was reached[7]. Where the appellant notifies the Inland Revenue, orally or in writing, that he does not wish to proceed with the appeal, and the Inland Revenue does not, within 30 days after that notification, give the appellant notice in writing indicating that it is unwilling that the appeal should be withdrawn, these provisions have effect as if, at the date of the appellant's notification, the appellant and the Inland Revenue had come to an agreement (orally or in writing, as the case may be) that the decision under appeal should be withheld without variation[8].

Where there is an appeal, the tax charged by the amendment or assessment in question remains due and payable as if there had been no appeal[9]. However, if the appellant has grounds for believing that the amendment or assessment overcharges him to tax, or as a result of the conclusion stated in the closure notice the tax charged is excessive, he may first apply by notice in writing to the Inland Revenue within 30 days of the specified date for a determination by them of the amount of tax the payment of which should be postponed pending the determination of the appeal; and where such a determination is not agree,d he may refer the application for postponement to the tribunal within 30 days from the date of the document notifying the Inland Revenue's decision on the amount to be postponed[10].

The determination of the tribunal in relation to any proceedings under the enactments relating to stamp duty land tax is final and conclusive, except as otherwise[11] provided[12]. If, on an appeal[13] notified to the tribunal, the tribunal decides tha the appellant is overcharged by any assessment, that assessment must be reduced accordingly. Otherwise it stands good. If on such an appeal it appears to the tribunal that the appellant is undercharged by any assessment, that assessment must be increased accordingly; and where on such an appeal against an assessment (other than a self-assessment) which assesses an amount chargeable to stamp duty land tax and charges that tax on that amount, the tribunal may, unless the circumstances of the case otherwise require, reduce or increase only the amount assessed, and where an appeal is so determined the stamp duty land tax charged by the assessment is taken to have been reduced or increased accordingly[14].

Where a party to an appeal[15] to the tribunal makes a further appeal, notwithstanding that the further appeal is pending, stamp duty land tax is payable or repayable in accordance with the determination[16].

1 Ie an amendment under the Finance Act 2003 s 78, Sch 10 para 17 (see PARA 1117A.27). If an appeal under head (1) of the TEXT against an assessment is made while an inquiry is in progress, none of the steps mentioned in Sch 10 para 36A(2)(a)-(c) may be taken in relation to the appeal: Sch 10 para 35(3) (amended by SI 2009/56). As to inquiries, see PARA 1117A.27.

2 For the meaning of 'closure notice', see PARA 1117A.27.

3 For the meaning of 'discovery assessment', see PARA 1117A.28.

4 Finance Act 2003 Sch 10 para 35(1). The assessment referred to is one made under Sch 10 para 29, see PARA 1117A.28.

An appeal may also be brought against a Revenue determination under Sch 10 para 25 (see PARA 1117A.28). In relation to such an appeal, the specified date is that on which the determination was issued, and the relevant officer of the Board is the officer by whom it was made: Sch 10 para 35(1)(e), (4A) (Sch 10 para 35(1)(e), (4A), (5A) added by SI 2004/3208). The only grounds upon which such an appeal lies are that (1) the purchase to which the determination relates did not take place; (2) the interest in the land to which the determination relates has not been purchased; (3) the contract for the purchase of the interest to which the determination relates has not been substantially performed; or (4) the land transaction is not notifiable (eg because the land transaction is exempt from charge under the Finance Act 2003 Sch 3, see PARA 1117A.6): Sch 10 para 35(5A) (amended by Finance Act 2008 Sch 30 para 7). For the meaning of 'notifiable transaction', see PARA 1117A.30.

5 Finance Act 2003 Sch 10 para 36(1), (5). In relation to an appeal under head (1) of the TEXT, the specified date is the date on which the notice of amendment was issued, and the relevant officer of the Board is the officer by whom that notice was given. In relation to an appeal under head (2) of the TEXT, the specified date is that date on which the closure notice was issued, and the relevant officer of the Board is the officer by whom that notice was given. In relation to an appeal under head (3) or (4) of the TEXT, the specified date is the date on which the notice of assessment was issued, and the relevant officer of the Board is the officer by whom that notice was given: Sch 10 para 36(2)-(4).

6 Ibid Sch 10 para 37(1) (amended by SI 2009/56). However, this provision does not apply if, within 30 days from the date when the agreement was come to, the appellant gives notice in writing to the Inland Revenue that he wishes to withdraw from the agreement: Finance Act 2003 Sch 10 para 37(2). For the meaning of 'Inland Revenue', see PARA 1117A.3 NOTE 6. References to an agreement being reached with an appellant, and to the giving of notice or notification by or to the appellant, include references to an agreement being reached, or notice or notification being given by or to, a person acting on behalf of the appellant in relation to the appeal: Sch 10 para 37(5).

7 Ibid Sch 10 para 37(3). As to persons acting on behalf of the appellant see NOTE 6.

8 Ibid Sch 10 para 37(4). As to persons acting on behalf of the appellant see NOTE 6.

9 Ibid Sch 10 para 38 (amended by SI 2009/56).

10 Finance Act 2003 Sch 10 para 39(1) (substituted by SI 2009/56). An application to the Inland Revenue must state the amount believed to be overcharged to tax and the grounds for that belief; and may be made more than 30 days after the specified date if there is a change in the circumstances of the case as a result of which the appellant has grounds for believing that he is overcharged to tax by the decision appealed against: Finance Act 2003 Sch 10 para 39(1), (3). Also, if after any determination on such an application of the amount of tax the payment of which should be postponed, there is a change in the circumstances of the case as a result of which either party has grounds for believing that the amount so determined has become excessive or, as the case may be, insufficient, he may, if the parties cannot agree on a revised determination, apply, at any time before the determination of the appeal, to the tribunal for a revised determination of that amount: Sch 10 para 39(4) (amended by SI 2009/56). The appellant and the relevant officer of the Board may agree that payment of an amount of tax be postponed pending the determination of the appeal, in which case, the same consequences follow, for all purposes, as would have followed if, at the time the agreement was reached, the tribunal had made a direction to the same effect (but without prejudice to the making of a further agreement or of a further direction): Finance Act 2003 Sch 10 para 40(1) (amended by SI 2009/56). Where such an agreement is not in writing, the fact that agreement has been reached, and the terms agreed, must be confirmed by notice in writing given by the Inland Revenue to the appellant, or by the appellant to that officer, and the time when such notice is given is treated as the time when the agreement was reached: Finance Act 2003 Sch 10 para 40(2). References to an agreement being reached with an appellant, and to the giving of notice or notification

by or to the appellant, include references to an agreement being reached, or notice or notification being given by or to, a person acting on behalf of the appellant in relation to the appeal: Sch 10 para 40(3).

The amount of tax of which payment is to be postponed is the amount (if any) by which it appears that there are reasonable grounds for believing that the appellant is overcharged: Sch 10 para 39(6) (amended by SI 2009/56). The date on which any tax of which payment is not postponed is due and payable is determined as if the tax were charged by an amendment or assessment of which notice was issued on the date on which the application was determined and against which there is no appeal; and on determination of the appeal the date on which any tax payable in accordance with that determination is due and payable, so far as it is tax the payment of which had been postponed or which would not have been charged by the amendment or assessment if there had been no appeal, is determined as if the tax were charged by an amendment or assessment (1) of which the notice was issued on the date on which Her Majesty's Revenue and Customs issues to the appellant a notice of the total amount payable in accordance with the determination and (2) against which there had been no appeal: Finance Act 2003 Sch 10 para 39(7), (8)(a) (amended by SI 2009/56). Any tax overpaid must be repaid: Finance Act 2003 Sch 10 para 39(8)(b).

An application under Sch 10 para 39 is subject to the relevant provisions of the Taxes Management Act 1970 Pt V (ss 46D-57) (see INCOME TAXATION): Finance Act 2003 Sch 10 para 39(5) (substituted by SI 2009/56). As to the Treasury's power to amend the Finance Act 2003 Sch 10 by regulations see PARA 1117A.25 NOTE 16.

If notice of appeal has been given to Her Majesty's Revenue and Customs (1) the appellant may notify it that he requires it to review the matter; (2) it may notify the appellant of an offer to review it; or (3) the appellant may notify the appeal to the tribunal: Sch 10 para 36A(1), (2) (Sch 10 paras 36A-36I added by SI 2009/56). This right of review does not prevent the appeal from being settled by agreement under the Finance Act 2003 Sch 10 para 37(1): Sch 10 para 36A(4).

In such a case, the appellant may notify the appeal to the tribunal, which must then decide the matter in question: Sch 10 para 36D(1)-(3). However, if Her Majesty's Revenue and Customs has given notification of its view under Sch 10 para 36B(2), or notification under Sch 10 para 36C, the appeal may be notified only in accordance with Sch 10 para 36G or 36H: Sch 10 para 36D(4), (5).

If the appellant requires a review, Her Majesty's Revenue and Customs must notify him within the period of 30 days beginning with the day on which it receives the notification from the appellant (or such longer period as is reasonable) notify the appellant of its view of the matter in question, and must review the matter in accordance with Sch 10 para 36E: Sch 10 para 36B(1)-(3), (5). The appellant may not notify Her Majesty's Revenue and Customs that he requires it to review the matter in question, nor may Her Majesty's Revenue and Customs be required to conduct a review, if (a) the appellant has already given a notification under these provisions in relation to the matter in question; (b) Her Majesty's Revenue and Customs has given a notification under Sch 10 para 36C in relation to that matter; or (c) the appellant has notified the appeal to the tribunal under Sch 10 para 36D: Sch 10 para 36B(4).

Her Majesty's Revenue and Customs may notify the appellant of an offer to review the matter in question, and if it does so, it must also notify him of its view of the matter: Sch 10 para 36C(1), (2). If, within the acceptance period (ie the period of 30 days beginning with the date of the document by which Her Majesty's Revenue and Customs notifies the offer of review), the appellant notifies Her Majesty's Revenue and Customs of acceptance of the offer, Her Majesty's Revenue and Customs must review the matter; but if he does not, the view notified by Her Majesty's Revenue and Customs is treated as if it were contained in an agreement in writing under Sch 10 para 37(1) for the settlement of that matter: Sch 10 para 36C((3), (4), (8). However, in such a case, the appellant may not give notice of withdrawal from the agreement under Sch 10 para 37(2) except if, or to the extent that, he notifies the appeal to the tribunal: Sch 10 para 36C(5), (6). Her Majesty's Revenue and Customs may not, however, notify the appellant of an offer to review the matter in question (and, accordingly, may not be required to conduct a review) if it has already given a notification under Sch 10 para 36C in relation to that matter; the appellant has required a review of that matter under Sch 10 para 36B; or the appellant has notified the appeal to the tribunal: Sch 10 para 36C(7).

The nature and extent of any review are to be such as appear to Her Majesty's Revenue and Customs appropriate in all the circumstances, but Her Majesty's Revenue and Customs must in particular have regard to steps taken by it in making the decision and by any person who is seeking to resolve disagreement about the decision: Sch 10 para 36E(1)-(3). The review must take account of any representations made by the appellant at a stage which gives Her Majesty's Revenue and Customs a reasonable opportunity to consider them; and may conclude that the decision is to be upheld, varied or cancelled: Sch 10 para 36E(4), (5). Her Majesty's Revenue and Customs must notify the appellant of the conclusions of the review and its reasoning, within the period of 45 days beginning with the relevant day, or such other period as may be agreed: Sch 10 para 36E(6). If no notice is given, within the specified period, the decision is taken to have been upheld, and the Inland Revenue must notify the appellant of that deemed conclusion: Sch 10 para 36E(6), (8), (9). The 'relevant day' is the day on which Her Majesty's Revenue and Customs received notification accepting the offer of a review (or, as the case may be, requiring a review): Sch 10 para 36E(7). The conclusions (or deemed conclusions) of such a review are treated as if they were an agreement in writing under Sch 10 para 37(1) for the settlement of the mater in question, but the appellant may not give notice of withdrawal under Sch 10 para 37(2) except if or to the extent hat he notifies the appeal to the tribunal under Sch 10 para 36G: Sch 10 para 36F.

If Her Majesty's Revenue and Customs has given notice of the conclusions of a review in accordance with Sch 10 para 36E; or the 45-day period (or such longer period as agreed) has ended and no notice has been given to the appellant of those conclusions, the appellant may notify the appeal to the tribunal within the post-review period, ie the period of 30 days beginning with the date of the document in which Her Majesty's Revenue and Customs gives notice of the conclusions or, where no such notice is given, the period beginning with the day following the last day of the 45-day (or longer agreed) period and ending 30 days after the date of the document in which Her Majesty's Revenue and Customs gives notice of the deemed conclusions of the review in accordance with Sch 10 para 35E(9): Sch 10 para 36G. If Her Majesty's Revenue and Customs has offered to review the matter in question and the appellant has not accepted the offer, the appellant may notify the appeal to the tribunal within the acceptance period: Sch 10 para 36H(1), (2). If that period has ended, notification may only be given with the permission of the tribunal: Sch 10 para 36H(3). If the appeal is so notified, the tribunal must determine the matter in question: Sch 10 para 36H(4).

'Matter in question' means the matter to which an appeal relates; and 'notification' means notification in writing: Sch 10 para 36I(1). References to the appellant include a person acting on the appellant's behalf except in relation to (i) notification of Her Majesty's Revenue and Customs' view under Sch 10 para 36B(2); (ii) notification by Her Majesty's Revenue and Customs of an offer of review (and of its view of the matter) under Sch 10 para 36C; and (iii) notification of the conclusions of a review under Sch 10 para 36E(6) or (9): Sch 10 para 36I(2). However, if a notification under head (i), (ii) or (iii) is given to the appellant, a copy of it may also be given to a person acting on behalf of the appellant: Sch 10 para 36I(3).

Where notice of appeal is not given before the relevant time limit, late notice may be given if Her Majesty's Revenue and Customs agrees or, where it does not, if the tribunal gives permission. Her Majesty's Revenue and Customs must accept late notice if (A) the appellant has made a written request to it; (B) it is satisfied that there was reasonable excuse for not giving the notice before the relevant time limit; and (C) it is satisfied that the request was made without unreasonable delay after the reasonable excuse ceased: Sch 10 para 44(1)-(6), (8) (Sch 10 paras 41-46 added by SI 2009/56). If such a request is made, Her Majesty's Revenue and Customs must notify the appellant whether or not it agrees to accept late notice: Finance Act 2003 Sch 10 para 44(7).

11 Ie in the Tribunals, Courts and Enforcement Act 2007 ss 9-14 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A.7-13A.9); the Taxes Management Act 1970 applied as modified (see INCOME TAXATION) or the enactments relating to stamp duty land tax.

12 Finance Act 2003 Sch 10 para 41.

13 Ie under ibid Sch 10 para 33(4) or 35(1).

14 Ibid Sch 10 para 42. Where the question in any dispute on any such appeal is a question of the market value of the subject matter of the land transaction, that question must be determined on a reference by the Upper Tribunal: Sch 10 para 45 (amended by SI 2009/1307).

15 Ie under ibid Sch 10 para 35.

16 Ibid Sch 10 para 43(1). If the amount charged by the assessment is altered by the order or judgment of the Upper Tribuanl or court, any stamp duty land tax overpaid must be refunded with such interest, if any, as may be allowed by the order or judgment; and any underpayment must be made good at the expiration of a period of 30 days beginning with the date on which the Inland Revenue issues to the other party a notice of the total amount payable in accordance with the order or judgment: Sch 10 para 43(2).

## 30. Registration of land transactions; certificates

A land transaction[1] or, as the case may be, a document effecting or evidencing such a transaction, may not be registered, recorded or otherwise reflected in an entry made in the register of title maintained by the Chief Land Registrar[2] unless there is produced, together with the relevant application, a certificate as to compliance with the stamp duty land tax requirements[3] in relation to the transaction or such information about compliance as the Commissioners for Her Majesty's Revenue and Customs may specify in regulations[4]. The certificate must be a certificate by the Inland Revenue (a 'Revenue certificate') that a land transaction return has been delivered in respect of the transaction[5].

In a case where a transaction is not notifiable, the purchaser must keep such records as may be needed to enable him to demonstrate that that is the case, and preserve those records for six years after the effective date of the transaction[6]. A person who fails to do so is liable to a penalty not exceeding £3,000[7].

1 Ie, for this purpose, every notifiable land transaction other than a transaction treated as taking place (1) under the Finance Act 2003 s 44(4) (see PARA 1117A. 3) or under that provision as it applies by virtue of s 45 (see PARA 1117A.3) or Sch 17A para 12B (see PARA 1117A.7); or (2) under s 44A(3) (see PARA 1117A.3) or under that provision as it applies by virtue of s 45A (see PARA 1117A.3); or (3) under Sch 17A para 12A(2) (see PARA 1117A.7) or 19(3); or (4) under Sch 17A para 13 or 15A (see PARA 1117.7): s 79(2) (amended by Finance Act 2004 s 297(1), (5), Sch 39 para 7; and Finance Act 2008 s 94(3)). For the general meaning of 'land transaction', see PARA 1117A.1.

2 As to the Chief Land Registrar, see LAND REGISTRATION.

3 Ie the requirements of the Finance Act 2003 Pt 4 (ss 42-124): see PARAS 1117A.1 et seq, 1117A.31 et seq.

4 Ibid s 79(1) (amended by Finance Act 2004 s 298(3); and Finance (No 2) Act 2005 s 47(2)). The Finance Act 2003 s 79(1) does not apply where the entry is required to be made without any application or so far as the entry relates to an interest or right other than the chargeable interest acquired by the purchaser under the land transaction in question: s 79(1). For the meaning of 'chargeable interest' and 'purchaser', see PARA 1117A.2. So far as it relates to the entry of a notice under the Land Registration Act 2002 s 34 , the Finance Act 2003 s 79(1) does not apply where the transaction in question is the variation of a lease: s 79(2A) (added by Finance Act 2004 s 297(6)).

5 Finance Act 2003 s 79(3) (amended by Finance Act 2004 s 297(7); and Finance Act 2008 Sch 30 para 2). The Inland Revenue may make provision by regulations about Revenue certificates, and such regulations may, in particular (1) make provision as to the conditions to be met before a certificate is issued; (2) prescribe the form and content of the certificate; (3) make provision about the issue of duplicate certificates if the original is lost or destroyed; (4) provide for the issue of multiple certificates where a return is made relating to more than one transaction: Finance Act 2003 s 79(4). For the meaning of 'land transaction return', see PARA 1117A.25; and as to the Inland Revenue's power to make regulations, see PARA 1117A.25 NOTE 3. See Stamp Duty Land Tax (Administration) Regulations 2003, SI 2003/2837; and PARA 1117A.2 NOTE 5.

6 Finance Act 2003 Sch 11 para 4(A1), (1), (2) (Sch 11 para 4(A1) added, Sch 11 para 4(1), (2) amended, by Finance Act 2008 Sch 30 para 9). The records required to be so kept and preserved include relevant instruments relating to the transaction (in particular, any contract or conveyance, and any supporting maps, plans or similar documents), and records of relevant payments, receipts and financial arrangements: Finance Act 2003 Sch 11 para 4(3). There is no requirement to keep and preserve records if the transaction is one treated as taking place under a provision listed in s 79(2)(a)-(d). For the meaning of 'Inland Revenue', see PARA 1117A.3 NOTE 6; and for the meaning of 'effective date', see PARA 1117A.3 NOTE 5. As from a day to be appointed, Sch 11 para 4 amended: Finance Act 2009 Sch 50 para 9.

The duty to preserve records may be satisfied by the preservation of the information contained therein; and where information is so preserved, a copy of any document forming part of the records is admissible in evidence in any proceedings before the tribunal to the same extent as the records themselves: Finance Act 2003 Sch 11 para 5 (amended by SI 2009/56).

7 Finance Act 2003 Sch 11 para 6(1). However, no penalty is incurred if the Inland Revenue is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to it: Sch 11 para 6(2). For the meaning of 'Inland Revenue', see PARA 1117A.3.

## 31. Liability for and payment of tax

The purchaser is liable to pay the tax in respect of a chargeable transaction[1]; and tax payable in respect of a land transaction must be paid not later than the filing date for the land transaction return relating to that transaction[2]. Tax payable as a result of the withdrawal of relief[3] must be paid not later than the filing date for the land transaction return relating to that withdrawal[4]. Tax payable as the result of the amendment of a return must be paid forthwith or, if the amendment is made before the filing date for the return, not later than that date; and tax payable in accordance with a determination or assessment by the Inland Revenue must be paid within 30 days after the determination or assessment is issued[5].

Interest is payable on the amount of any unpaid tax from the end of the period of 30 days after the relevant date[6] until the tax is paid[7]. A penalty carries interest from the date it is determined until payment[8]. Any repayment of tax or of a penalty carries interest from the date on which the tax or penalty was paid ('the relevant date') until the date when the order for repayment is issued[9].

Where payment is made to the Inland Revenue by cheque, which is paid on its first presentation to the banker on whom it is drawn, payment is treated as made on the date on which the cheque was received by the Inland Revenue[10].

The purchaser may apply to the Inland Revenue to defer payment of tax in a case where the amount payable depends on the amount or value of chargeable consideration that at the effective date of the transaction is contingent or uncertain, and falls to be paid or provided on one or more future dates, of which at least one falls, or may fall, more than six months after the effective date of the transaction[11].

Where tax is chargeable as a result of the withdrawal of group relief[12], the amount so chargeable has been finally determined, and the whole or part of the amount so chargeable is unpaid six months after the date on which it became payable, the following persons may, by notice[13], be required to pay the unpaid tax: (1) the vendor[14]; (2) any company that at any relevant time[15] was a member of the same group as the purchaser and was above it in the group structure[16]; (3) any person who at any relevant time was a controlling director of the purchaser or a company having control of the purchaser[17].

Where tax is chargeable as a result of the withdrawal of reconstruction or acquisition relief[18], the amount so chargeable has been finally determined, and the whole or part of the amount so chargeable is unpaid six months after the date on which it became payable, the following persons may, by notice[19], be required to pay the unpaid tax: (a) any company that at the relevant time[20] was a member of the same group as the acquiring company and was above it in the group structure[21]; (b) any person who at any relevant time was a controlling director of the acquiring company or a company having control of the acquiring company[22].

1 Finance Act 2003 s 85(1). For the meaning of 'purchaser', see PARA 1117A.2, and for the meaning of 'chargeable transaction', see PARA 1117A.1.

2 Ibid s 86(1) (amended by the Finance Act 2007 s 80(6)(a)). For the meaning of 'land transaction' see PARA 1117A.1; and for the meaning of 'land transaction return' see PARA 1117A.25.

3 Ie group relief (see PARA 1117A.17), reconstruction or acquisition relief (see PARA 1117A.18) or charities relief (see PARA 1117A.22).

4 Finance Act 2003 s 86(2) (amended by the 2007 Act s 80(6)(b)). As to the making of such a return, see PARA 1117A.22 NOTE 10.

5 Finance Act 2003 s 86(3), (4). For the meaning of 'filing date' see PARA 1117A.25 NOTE 10. As to amendments to returns see PARA 1117A.25; and as to determinations and assessments see PARA 1117A.28. Section 86 is subject to s 90 (see PARA 1117A.31) and Sch 10 paras 39, 40 (postponement, see PARA 1117A.29); and does not affect the date from which interest is payable (see): s 86(5), (6).

6 In the case of an amount payable because relief is withdrawn under ibid Sch 6A (as added, see PARA 1117A.15), Sch 7 Pt 1 (see PARA 1117A.17) or Pt 2 (see PARA 1117A.18), or under Sch 8 (see PARA 1117A.22), the relevant date is the date of the disqualifying event: s 87(3) (amended by Finance Act 2004 Sch 39 paras 17(4), 19(3)). 'Disqualifying event' means (1) in relation to the withdrawal of relief under the Finance Act 2003 Sch 6A, an event mentioned in Sch 6A para 11(2)(a)-(c), (3)(a)-(c), (4)(a)-(c) or (5)(a)-(c); (2) the purchaser ceasing to be a member of the same group as the vendor (within the meaning of Sch 7 Pt 1); (3) the change of control of the acquiring company mentioned in Sch 7 para 9(1)(a); (4) the event mentioned in Sch 7 para 11(1)(a) or (2)(a); or (5) a disqualifying event as defined in Sch 8 para 2(3) or 3(2), as the case may be: s 87(4) (amended by the Finance Act 2004 s 302(6), Sch 39 para 17(4)(b)). In the case of a deferred payment under the Finance Act 2003 s 90, the relevant date is the date when the deferred payment is due; and in the case of an amount payable under s 81A (see PARA 1117A.4 NOTE 7) in respect of an earlier transaction because of the effect of a later linked transaction, the relevant date is the effective date of the later transaction: s 87(3) (amended by the Finance Act 2004 s 302(6), Sch 39 paras 17(4)(a), 19(3), 22(5)). In any other case, it is the effective date of the transaction: Finance Act 2003 s 87(3)(c). In a case within s 51 (see PARA 1117A.10), if payment is not deferred under s 90, interest on any tax payable under s 80 also runs from the effective date of the transaction: s 87(5). For the meaning of 'effective date', see PARA 1117A.3 NOTE 5; and for the meaning of 'linked transaction', see PARA 1117A.4 NOTE 7.

7 Ibid s 87(1). The Inland Revenue may by regulations amend s 87(1) so as to make interest run from the end of such shorter period after the relevant date as may be prescribed or, if the regulations so provide, from that date: s 87(2). As to the making of such regulations, see PARA 1117A.2 NOTE 5.

Interest is calculated at the rate applicable under the Finance Act 1989 s 178 (see INCOME TAXATION): Finance Act 2003 s 87(7). If an amount is lodged with the Inland Revenue in respect of the tax, the amount on which interest is payable is reduced by that amount: s 87(6).

8 Ibid s 88. As to the rate of interest, see NOTE 7. As to penalties generally, see PARA 1117A.35.

9 Ibid s 89(1), (2). Interest is also due on a repayment by the Inland Revenue of an amount lodged with it in respect of the tax payable in respect of a transaction, the relevant date in this case being the date on which the amount was lodged with it: s 89(3). However, no interest is payable in either case in respect of a payment made in consequence of an order or judgment of a court having power to allow interest on the payment: s 89(4). Such interest is payable at the rate for the time being applicable under the Finance Act 1989 s 178 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1813) and does not constitute income of the recipient for any tax purpose: Finance Act 2003 s 89(4), (5).

10 Ibid s 92. For the meaning of 'Inland Revenue' see PARA 1117A.3 NOTE 6.

11 Ibid s 90(1). For the meaning of 'contingent', see PARA 1117A.10 NOTE 1; for the meaning of 'uncertain', see PARA 1117A.10 NOTE 3; and for the meaning of 'effective date', see PARA 1117A.3 NOTE 5. Such an application does not affect the purchaser's obligations as regards payment of tax in respect of chargeable consideration that has already been paid or provided, or is not contingent, and the amount of which is ascertained or ascertainable at the time the application is made (and this applies as regards both the time of payment and the calculation of the amount payable): s 90(5). For the meaning of 'purchaser', see PARA 1117A.2; and for the meaning of 'chargeable consideration', see PARA 1117A.7 et seq.

The Inland Revenue may make provision by regulations for carrying s 90 into effect, and such regulations may, in particular (1) specify when an application is to be made; (2) impose requirements as to the form and content of an application; (3) require the applicant to provide such information as the Inland Revenue may reasonably require for the purposes of determining whether to accept an application; (4) specify the grounds on which an application may be refused; (5) specify the procedure for reaching a decision on an application; (6) make provision for postponing payment of tax where an application has been made; (7) provide for an appeal to the tribunal against a refusal to accept an application, and make provision in relation to such an appeal corresponding to any provision made in relation to appeals under Sch 10 Pt 7 (see PARA 1117A.29); (8) provide for the effect of accepting an application; (9) require the purchaser to make a return or further return, and to make such payments or further payments of tax as may be specified, in such circumstances as may be specified (and Sch 10 (see PARA 1117A.25 et seq) applies to a return under such a provision as it applies to a land transaction return): s 90(2)-(4). Such regulations may also provide that where a payment is made as mentioned in s 90(5), and a deferment application under s 90 is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment, s 80 (see PARA 1117A.10) does not apply in relation to the payment, any necessary adjustment being made, instead, in accordance with the regulations: s 90(6). As to the making of such regulations, see PARA 1117A.10 NOTE 5. See Stamp Duty Land Tax (Administration) Regulations 2003, SI 2003/2837; and PARA 1117A.2 NOTE 5.

12 Ie under the Finance Act 2003 Sch 7 para 3: see PARA 1117A.17.

13 The Inland Revenue may serve notice on a person within heads (1)-(3) of the TEXT requiring him within 30 days of the service of the notice to pay the amount that remains unpaid: ibid Sch 7 para 6(1). Any such notice must be served before the end of the period of three years beginning with the date of the final determination of the amount chargeable; and must state the amount required to be paid by the person on whom it is served: Sch 7 para 6(2), (3). The notice has effect for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and for the purpose of appeals, as if it were a notice of assessment and that amount were an amount of tax due from that person: Sch 7 para 6(4). As to assessments, see PARA 1117A.4; and as to the service of notice, see PARA 1117A.28 NOTE 16.

14 Ibid Sch 7 para 5(2)(a). For the meaning of 'vendor', see PARA 1117A.2.

15 A 'relevant time' means any time between the effective date of the relevant transaction and the purchaser ceasing to be a member of the same group as the vendor: ibid Sch 7 para 5(3)(a).

16 Ibid Sch 7 para 5(2)(b). A company ('company A') is 'above' another company ('company B') in a group structure if company B, or another company that is above company B in the group structure, is a 75 per cent subsidiary of company A: Sch 7 paras 5(3)(b), 12(4). For the meaning of 'members of the same group' and '75 per cent subsidiary', see PARA 1117A.17.

17 Ibid Sch 7 para 5(2)(c). 'Director', in relation to a company, has the meaning given by the Income Tax (Earnings and Pensions) Act 2003 s 67(1) (see INCOME TAXATION) (read with s 67(2)) and includes any person

falling within the Income and Corporation Taxes Act 1988 s 417(5) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1296) read with s 417(6); and 'controlling director', in relation to a company, means a director of the company who has control of it (construing 'control' in accordance with s 416 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299): Finance Act 2003 Sch 7 paras 5(4), 12(5). A person who has paid an amount in pursuance of a notice under these provisions may recover that amount from the purchaser: Sch 7 para 6(5). Such a payment is not allowed as a deduction in computing any income, profits or losses for any tax purpose: Sch 7 para 6(6). In relation to a transaction to which Sch 15 para 10 (see PARA 1117A.38) applies which is a chargeable transaction by virtue of Sch 15 para 17 (see PARA 1117A.38), for 'purchaser' in Sch 7 para 4 read 'the relevant partner': Sch 7 para 4 (amended by Sch 15 para 27 (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

18 Ie under the Finance Act 2003 Sch 7 para 9 or 11: see PARA 1117A.18.

19 The Inland Revenue may serve notice on a person within head (a) or (b) of the TEXT requiring him within three years of the service of the notice to pay the amount that remains unpaid: ibid Sch 7 para 13(1). Any such notice must be served before the end of the period of three years beginning with the date of the final determination of the amount chargeable; and must state the amount required to be paid by the person on whom it is served: Sch 7 para 13(2), (3). The notice has effect for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and for the purpose of appeals, as if it were a notice of assessment and that amount were an amount of tax due from that person: Sch 7 para 13(4).

20 'Relevant time' means any time between the effective date of the relevant transaction and the change of control by virtue of which tax is chargeable: ibid Sch 7 para 12(3). For the meaning of 'relevant transaction', see PARA 1117A.17; and for the meaning of 'effective date', see PARA 1117A.3 NOTE 5.

21 Ibid Sch 7 para 12(2)(a). For the meaning of 'above it in the group structure', see NOTE 16.

22 Ibid Sch 7 para 12(2)(b). For the meaning of 'director' and 'controlling director', see NOTE 17. A person who has paid an amount in pursuance of a notice under these provisions may recover that amount from the purchaser: Sch 7 para 13(5). Such a payment is not allowed as a deduction in computing any income, profits or losses for any tax purpose: Sch 7 para 13(6).

## 32. Collection and recovery

Where tax is due and payable, a collector of taxes may make demand of the sum charged from the person liable to pay it and, on payment of the tax, the collector must, if so requested, give a receipt[1].

If a person neglects or refuses to pay the sum charged, upon demand made by the collector, the collector may distrain upon the goods and chattels of the person charged ('the person in default'); and for the purposes of levying such distress, a justice of the peace, on being satisfied by information on oath that there is reasonable ground for believing that a person is neglecting or refusing to pay a sum charged, may issue a warrant in writing authorising a collector to break open, in the daytime, any house or premises, calling to his assistance any constable[2]. A levy or warrant to break open must be executed by, or under the direction of, and in the presence of, the collector; and a distress levied by the collector must be kept for five days, at the costs and charges of the person in default. If the person in default does not pay the sum due, together with the costs and charges, the distress must be appraised by one or more independent persons appointed by the collector, and must be sold by public auction by the collector for payment of the sum due and all costs and charges. Any surplus resulting from the distress, after the deduction of the costs and charges and of the sum due, must be restored to the owner of the goods concerned[3].

An amount not exceeding £2,000 due and payable by way of stamp duty land tax is recoverable summarily as a civil debt in proceedings brought in the name of the collector; and all or any of the sums so recoverable that are due from any one person and payable to the collector, may be included in the same complaint, summons or other document required to be laid before or issued by justices[4].

Tax may be sued for and recovered from the person charged as a debt due to the Crown, or by any other means by which a debt of record or otherwise due to the Crown may be sued for and recovered, by proceedings in the High Court[5].

1 Finance Act 2003 s 91(1), Sch 12 para 1. The provisions of Sch 12 have effect in relation to the collection and recovery of any unpaid amount by way of penalty or interest as if it were an amount of unpaid tax: s 91(2). As to collectors of taxes, see INCOME TAXATION. As to penalties generally, see PARA 1117A.35.

2 Ibid Sch 12 para 2(1), (2). Every such constable must, when so required, assist the collector in the execution of the warrant and in levying such distress in the house or premises: Sch 12 para 2(2).

3 Ibid Sch 12 para 2(3)-(5). The Treasury may by regulations make provision with respect to the fees chargeable on or in connection with the levying of distress, and the costs and charges recoverable where distress has been levied: Sch 12 para 2(6). As to the making of such regulations, see PARA 1117A.2 NOTE 5. See Stamp Duty Land Tax (Administration) Regulations 2003, SI 2003/2837; and PARA 1117A.2 NOTE 5.

4 Finance Act 2003 Sch 12 para 4(1), (2). Each such document, as respects each such sum, is construed as a separate document, and its invalidity as respects any one such sum does not affect its validity as respects any other such sum: Sch 12 para 4(2). Proceedings may be brought at any time within one year from the time when the matter complained of arose: Sch 12 para 4(3). The Treasury may by order increase the sum specified in Sch 12 para 4(1): Sch 12 para 4(5). As to the making of such orders, see PARA 1117A.2 NOTE 5.

5 Ibid Sch 12 para 6.

### 33. Information powers: requirement to deliver documents or provide information

An authorised officer of the Board[1] may by notice in writing require a person (1) to deliver to him such documents as are in that person's possession or power and (in the officer's reasonable opinion) contain, or may contain, information relevant to any tax liability to which that person may be subject, or the amount of any such liability, or to provide the officer with such information as he may reasonably require as being relevant to, or to the amount of, any such liability[2].

The notice must specify or describe the documents or information to which it relates, and require the documents to be delivered, or the information to be provided, within such time as may be specified in the notice (which must not be less than 30 days after the date of the notice)[3]. The consent of the tribunal is required for the giving of such a notice, and such consent may not be given unless the tribunal is satisfied that, in all the circumstances, the officer is justified in proceeding in accordance with these provisions[4].

The Board[5] is separately empowered to require a person (by notice in writing) to deliver to a named officer of the Board such documents as are in that person's possession or power and (in the Board's reasonable opinion) contain, or may contain, information relevant to any tax liability to which the person is or may be subject, or the amount of any such liability; or to provide to such an officer such information as the Board may reasonably require as being so relevant[6]. Such a notice must specify or describe the documents or information to which it relates, and require the documents to be delivered, or the information to be provided, within such time as may be specified in the notice[7].

An authorised officer of the Board may, for the purpose of inquiring into the tax liability of any person ('the taxpayer') by notice in writing require any other person to deliver to the officer (or, if the person to whom the notice is given so elects, to make available for inspection by a named officer of the Board), such documents as are in that person's possession or power and (in the officer's reasonable opinion) contain, or may contain, information relevant to any tax liability to which the taxpayer is or may be, or may have been, subject, or the amount of any such liability[8]. The notice must specify or describe the documents to which it relates, and require the documents to be delivered or made available within such time (not being less than 30 days from the date of the notice) as may be specified in the notice[9]. A copy of the notice must be given to the taxpayer concerned[10].

Where a person who has stood in relation to others as a tax accountant is convicted of an offence in relation to tax by or before a court in the United Kingdom, or has a penalty imposed on him[11], an authorised officer of the Board may by notice in writing require that person to

deliver to him such documents as are in his possession or power and (in the officer's reasonable opinion) contain information relevant to any tax liability to which any client of his is or has been, or may be or have been, subject, or to the amount of any such liability[12]. The notice must specify or describe the documents to which it relates, and require them to be delivered within such time (not being less than 30 days after the date of the notice) as may be specified in the notice[13].

In any of the above cases, the person to whom documents are delivered, or information provided, in pursuance of a notice, may take copies of them or of extracts from them[14].

Failure to comply with a notice given under any of the powers set out above which are exercisable by an authorised officer of the Board is visited with a penalty not exceeding £300; but if the failure continues after such a penalty has been imposed, the defaulter is liable to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this provision has already been imposed)[15]. A person who, having been given such a notice, fraudulently or negligently delivers, provides or makes available any incorrect document or information is liable to a penalty not exceeding £3,000[16].

The powers of an authorised officer are subject to the following restrictions:

308 (1) they do not apply to personal records or to journalistic material, or to information contained therein[17];
309 (2) a person cannot be obliged to deliver or make available documents, or provide information, relating to the conduct of any pending appeal by him (or, as the case may be, by the taxpayer or by the client)[18];
310 (3) an authorised officer may not give notice to a barrister, advocate or solicitor[19];
311 (4) a notice seeking documents from a third party does not oblige a person to deliver or make available a document the whole of which originates more than six years before the date of the notice[20];
312 (5) a notice seeking documents from a third party does not oblige a person who has been appointed as auditor for the purposes of any enactment to deliver or make available documents that are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment; and does not oblige a tax adviser to deliver or make available documents that are his property and consist of relevant communications[21].

1 An 'authorised officer of the Board' means an officer of the Board authorised for this purpose: Finance Act 2003 s 93(1), Sch 13 paras 1(2), 6(2), 14(2).

2 Ibid Sch 13 para 1(1). Before a person is given such a notice, he must be given a reasonable opportunity to deliver the documents or provide the information in question, and no application for consent to issue a notice may be made unless such an opportunity has been given: Sch 13 para 1(3).

3 Ibid Sch 13 para 3. The officer giving the notice must also give to the person to which it applies a written summary of his reasons for applying for consent to the issue of that notice; but this does not require the disclosure of any information that would, or might, identify any person who has provided the officer with any information which he took into account in deciding whether to apply for consent, or that the tribunal giving that consent directs need not be disclosed: Sch 13 para 4(1), (2) (Sch 13 para 4(2) amended by SI 2009/56). The tribunal may not give any such direction unless satisfied that the officer has reasonable grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax: Finance Act 2003 Sch 13 para 4(3) (amended by SI 2009/56).

4 Finance Act 2003 Sch 13 paras 2(1), (2), 7(1), (2) (amended by SI 2009/56). As to the tribunal see INCOME TAXATION.

5 For the meaning of 'the Board' see PARA 1117A.1.

6 Finance Act 2003 Sch 13 para 28(1). No such notice may be given unless the Board has reasonable grounds for believing that the person to whom it relates may have failed, or may fail, to comply with any provision of Pt 4 (ss 42-124) (see PARA 1117A.1 et seq, PARA 1117A.34 et seq), and that any such failure is likely to have led, or to lead, to serious prejudice to the proper assessment or collection of tax: Sch 13 para 28(2).

This power does not extend to personal records (as defined in the Police and Criminal Evidence Act 1984 s 12 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 875)), or to journalistic material (as defined in the Police and Criminal Evidence Act 1984 s 13) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 475): Finance Act 2003 Sch 13 paras 20(2), 31.

7 Ibid Sch 13 para 29. Note that the Board's power to issue a notice is not generally subject to the restrictions set out in Sch 13 paras 19-27. Also, the penalties imposed by s 93(3)-(6) do not apply in respect of notice issued by the Board.

8 Ibid Sch 13 para 6(1). The persons who may be treated as 'the taxpayer' for this purpose include a company that has ceased to exist and an individual who has died, but in the latter case no notice may be given more than six years after the individual's death: Sch 13 para 6(4). The issue of such a notice requires consent from the tribunal, which must be satisfied that in all the circumstances it is justified(see NOTE 3): Sch 13 para 7(1), (2) (amended by SI 2009/56). Before a person is given such a notice, he must be given a reasonable opportunity to deliver the documents in question, and no application for consent to issue a notice may be made unless such an opportunity has been given: Sch 13 para 6(3).

9 Ibid Sch 13 para 8(1). The notice must also name the taxpayer to whom it relates unless, on an application made by an officer of the Board, authorised for that purpose by an order of the Board, a tribunal consents to the withholding of the name: Sch 13 paras 8(3), 11(1) (Sch 13 para 11(1) amended by SI 2009/56). Such consent may not be given unless the tribunal is satisfied that (1) the notice relates to a taxpayer whose identity is not known to the officer, or to a class of taxpayers whose individual identities are not so known; (2) there are reasonable grounds for believing that the taxpayer, or any of the class of taxpayers, concerned may have failed, or may fail, to comply with any provision of the Finance Act 2003 Pt 4; (3) any such failure is likely to have led, or to lead to, serious prejudice to the proper assessment or collection of tax; and (4) the information that is likely to be contained in the documents to which the notice relates is not readily available from another source: Sch 13 para 11(2) (amended by SI 2009/56). Before a person is given such a notice, he must be given a reasonable opportunity to deliver the documents in question, and no application for consent may be made unless such an opportunity has been given: Finance Act 2003 Sch 13 para 11(3). A person to whom such a notice is given may, by notice in writing given to the officer concerned within 30 days after the date of the notice, object to it on the ground that it would be onerous for him to comply with it; and if the matter is not resolved by agreement, it must be referred to the tribunal which may confirm, vary or cancel the notice: Sch 13 para 11(4), (5) (Sch 13 para 11(5) amended by SI 2009/56). A notice under the Finance Act 2003 Sch 13 para 11 must specify or describe the documents to which it relates, and require them to be delivered or made available within such time (not being less than 30 days from the date of the notice) as may be specified therein: Sch 13 para 12.

10 Ibid Sch 13 para 9(1). However, this provision does not apply if, on application by the officer concerned, the tribunal directs otherwise; and such direction may only be given if the tribunal is satisfied that the officer has reasonable grounds for suspecting the taxpayer of fraud: Sch 13 para 9(2), (3) (amended by SI 2009/56). Except where such a direction is given, the officer must also give to the taxpayer concerned a written summary of his reasons for applying for consent to the notice: Finance Act 2003 Sch 13 para 10(1), (4). This does not require the disclosure of any information that would, or might, identify any person who has provided the officer with any information which he took into account in deciding whether to apply for consent, or that the tribunal giving consent under Sch 13 para 7 directs need not be disclosed: Sch 13 para 10(2). The tribunal may not give such a direction unless satisfied that the officer has reasonable grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax: Sch 13 para 10(3) (amended by SI 2009/56).

11 Ie a penalty under the Finance Act 2003 s 96 (see PARA 1117A.35). No notice may be given for so long as an appeal is pending against the conviction or penalty; and an appeal is treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing it: Sch 13 para 15(1), (2)(a). References to an appeal include a further appeal, but in relation to the imposition of a penalty do not include an appeal against the amount of the penalty: Sch 13 para 15(2)(b). No notice may be given by reference to a person's conviction or the imposition on him of a penalty after the end of the period of 12 months beginning with the date on which the power to give such a notice was first exercisable in his case by virtue of that conviction or penalty: Sch 13 para 15(3).

12 Ibid Sch 13 para 14(1). Before a person is given such a notice, he must be given a reasonable opportunity to deliver the documents in question, and no application for consent to issue a notice may be made unless such an opportunity has been given: Sch 13 para 14(3).

13 Ibid Sch 13 para 17. The consent of a circuit judge is required for the giving of a notice under Sch 13 para 14, and such consent may not be given unless the judge is satisfied that in all the circumstances the officer is justified in proceeding under these provisions: Sch 13 para 16.

14 Ibid Sch 13 paras 5, 13, 18, 30.

15 Ibid s 93(3), (4). No penalty may be imposed under either provision in respect of a failure at any time after that failure has been remedied: s 93(5). The delivery of photographic or facsimile copies of documents required by a notice is sufficient compliance with that notice unless the officer or the Board requires the originals of specified documents to be made available for inspection by a named officer of the Board: Sch 13 para 23(1), (2). Failure to comply with such a requirement is treated as failure to comply with the notice: Sch 13 para 23(3), (4). As to penalties generally see PARA 1117A.35.

16 Ibid s 93(6). A person commits an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of a document which the Board or an authorised officer has required or requested under the above provisions to be delivered or made available for inspection, or if he causes or permits such falsification, concealment, destruction or disposal; and is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both: Sch 13 para 53(1), (2), (6). As to the statutory maximum, see PARA 1113 NOTE 2). However, no such offence is committed if the person acts (1) with the written permission of the tribunal or an officer of the Board; (2) after the document has been delivered or, as the case may be, inspected; (3) after a copy has been delivered in accordance with Sch 13 para 23(1) or 27(3) and the original has been inspected; (4) (in a case where formal notice has been given) after the end of the period of two years beginning with the date on which the notice is given or the order made, unless before the end of that period an officer of the Board has notified the person, in writing, that the notice or order has not been complied with to his satisfaction; or (5) (in a case where an opportunity has been given to deliver the document or make it available for inspection without a formal notice) (a) after the end of the period of six months beginning with the date on which an opportunity to deliver the document was given, or (b) after an application for consent to a notice being given in relation to the document has been refused: Sch 13 para 53(3)-(5) (Sch 13 para 53(3) amended by SI 2009/56).

17 Finance Act 2003 Sch 13 paras 1, 20. For the meaning of 'personal records' and 'journalistic material', see NOTE 6.

18 Ibid Sch 13 paras 1, 21. 'Appeal' means an appeal relating to stamp duty land tax: Sch 13 para 21(4).

19 Ibid Sch 13 paras 1, 22. In relation to such persons, identical powers are exercisable by the Board: Sch 13 para 22. This restriction does not apply to a notice given under Sch 13 para 1 in respect of the personal affairs of the individual concerned: Sch 13 para 22. A notice given by the Board does not oblige a barrister, advocate or solicitor to deliver or make available, without his client's consent, any document with respect to which a claim to legal privilege could be maintained: Sch 13 para 25. For the meaning of 'legal privilege', see PARA 1117A.34.

20 Ibid Sch 13 paras 1, 24(1). Schedule 13 para 24(1) applies only to notices given under Sch 13 para 6 or 11, and its application may be expressly excluded by the notice concerned: Sch 13 para 24(2). A notice may only be so expressed if (1) in the case of a notice given by an authorised officer, the tribunal giving consent to the notice has also approved the exclusion; and (2) in the case of a notice given by the Board, it has applied to the tribunal for, and has obtained, such approval: Sch 13 para 24(3) (amended by SI 2009/56). Approval may only be given (in either case) if the tribunal is satisfied, on application by an officer or the Board, that tax has been, or may have been, lost to the Crown owing to the fraud of the taxpayer: Finance Act 2003 Sch 13 para 24(4) (amended by SI 2009/56).

21 Finance Act 2003 Sch 13 paras 1, 26(1). Schedule 13 para 26(1) applies only to notices given under Sch 13 para 6 or 11: Sch 13 para 26(1). 'Tax adviser' means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of his) (Sch 13 para 26(3); and 'relevant communications' means communications between the tax adviser and a person in relation to whose tax affairs he has been appointed, or any other tax adviser of such a person, the purpose of which is the giving or obtaining of advice about any of those tax affairs (Sch 13 para 26(2)).

However, where a document which is within Sch 13 para 26 contains (1) information explaining any information, return or other document that the person to whom the notice is given has as a tax accountant (sic) assisted any client of his in preparing for, or for delivering to, the officer or the Board; or (2) in the case of a notice under Sch 13 para 11, information as to the identity or address of any taxpayer to whom the notice relates or any person who acted on behalf of any such person, that has not otherwise been made available to the Inland Revenue, then the person to whom the notice is given must, if he does not deliver the document or make it available for inspection in accordance with the notice, (a) deliver to the officer or, as the case may be, the Board, a copy (photographic or otherwise by way of facsimile) of any parts of the document that contain such information as is mentioned in head (1) or (2); and (b) if so required by the officer or, as the case may be, the Board, make available for inspection by a named officer of the Board such parts of the original document as contain such information: Sch 13 paras 26(4), 27(1), (3). Failure to do so counts as a failure to comply with the notice: Sch 13

para 27(4). Information is regarded for this purpose as having been made available to the Inland Revenue if it is contained in some other document which (or a copy of which) has been delivered to the officer or the Board, or which has been inspected by an officer of the Board: Sch 13 para 27(2).

### 34. Information powers: miscellaneous

The appropriate judicial authority[1] may make an order requiring the person who appears to have in his possession or power the documents specified or described in the order to deliver them to an officer of the Board within ten working days after the day on which notice of the order is served on him, or such longer or shorter period as may be specified in the order[2]. The authority must be satisfied on information on oath given by an authorised officer of the Board[3] that:

313 (1) there is reasonable ground for suspecting that an offence involving serious fraud in connection with, or in relation to, stamp duty land tax has been or is about to be committed; and
314 (2) that documents that may be required as evidence for the purposes of any proceedings in respect of such an offence are or may be in the power or possession of any person[4].

A person is entitled to notice of the intention to apply for such an order against him and to appear and be heard at the hearing of the application, unless the appropriate judicial authority is satisfied that this would seriously prejudice the investigation of the offence[5]. A person so notified must not conceal, destroy, alter or dispose of any document to which the application relates; or disclose to any other person information or any other matter likely to prejudice the investigation of the offence to which the application relates[6].

A person who fails to comply with such an order may be dealt with as if he had committed a contempt of court[7].

Where a document delivered to an officer of the Board in pursuance of such an order is of such a nature that a photograph or copy of it would be sufficient for use as evidence at a trial for an offence, or for forensic examination or for investigation in connection with an offence, it must not be retained longer than is necessary to establish that fact and to obtain the photograph or copy[8].

If the Board authorises one of its officers to inspect any property for the purposes of ascertaining its market value, or any other matter relevant for the purposes of stamp duty land tax, the person having custody or possession of the property must permit the officer so authorised to inspect it at such reasonable times as the Board may consider necessary[9].

A person is deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Inland Revenue may allow; and where a person had a reasonable excuse for not doing anything required to be done for the purposes of stamp duty land tax, he is deemed not to have failed to do it unless the excuse ceased, and after the excuse ceased, he is deemed not to have failed to do it if he did it without unreasonable delay after such cessation[10].

Statements made or documents produced by or on behalf of a person are not inadmissible in specified proceedings by reason only that it has been drawn to that person's attention:

315 (i) that where serious tax fraud has been committed, the Board may accept a money settlement, and that the Board will accept such a settlement, and will not pursue a criminal prosecution, if he makes a full confession of all tax irregularities; or
316 (ii) that the extent to which he is helpful and volunteers information is a factor that will be taken into account in determining the amount of any penalty,

and that he was or may have been induced thereby to make the statements or produce the documents[11].

1 The appropriate judicial authority is a circuit judge: Finance Act 2003 s 93(1), Sch 13 paras 32(3)(a), 43(2)(a).

2 Ibid Sch 13 para 32(1), (2). 'Working day' means any day other than a Saturday, Sunday or public holiday: Sch 13 para 32(2). As to the service of notice, see PARA 1117A.28 NOTE 16.

3 An 'authorised officer of the Board' means an officer of the Board authorised by the Board for this purpose: ibid Sch 13 para 32(5). As to the Board, see PARA 1117A.1. The Inland Revenue may make provision by regulations as to the procedures for approving in any particular case the decision to apply for such an order, and the descriptions of officer by whom such approval may be given: Sch 13 para 32(6). Such regulations may contain such incidental, supplementary and transitional provision as appears to the Inland Revenue to be appropriate: Sch 13 para 42. As to the making of such regulations, see PARA 1117A.2 NOTE 5.

4 Ibid Sch 13 para 32(1). The Inland Revenue may make provision by regulations as to how a person is to comply with an order under Sch 13 para 32; and such regulations may, in particular, make provision as to (1) the officer of the Board to whom the documents are to be produced; (2) the address to which the documents are to be taken or sent; and (3) the circumstances in which sending documents by complies with the order: Sch 13 para 37(1). They may similarly make provision as to the circumstances in which notice of such an order, or of an application for such an order, is to be treated as having been given: Sch 13 para 41. Such regulations may contain such incidental, supplementary and transitional provision as appears to the Inland Revenue to be appropriate: Sch 13 para 42. As to the making of such regulations, see PARA 1117A.2 NOTE 5. Where an order relates to a document in electronic or magnetic form, the order is taken to require the person to deliver the information recorded in the document in a visible and legible form: Sch 13 para 37(2). See Stamp Duty Land Tax (Administration) Regulations 2003, SI 2003/2837; and PARA 1117A.2 NOTE 5.

5 Finance Act 2003 Sch 13 para 33(1). The Inland Revenue may make provision by regulations as to the notice to be given, the contents of the notice, and the manner of giving it: Sch 13 para 33(2). Such regulations may contain such incidental, supplementary and transitional provision as appears to the Inland Revenue to be appropriate: Sch 13 para 42. As to the making of such regulations, see PARA 1117A.2 NOTE 5. See SI 2003/2837.

6 Finance Act 2003 Sch 13 para 34(1). However, this provision does not prevent anything being done (1) with the leave of the appropriate judicial authority; (2) with the written permission of an officer of the Board; (3) after the application has been dismissed or abandoned; or (4) after any order made on the application has been complied with: Sch 13 para 34(2). Nor does it prevent a professional legal adviser from disclosing any information or other matter (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or (b) to any person in contemplation of, or in connection with, legal proceedings, and for the purposes of those proceedings, unless the disclosure is with a view to furthering a criminal purpose: Sch 13 para 34(3). A person who fails to comply with Sch 13 para 34(1) may be dealt with as if he had failed to comply with an order under Sch 13 para 32. See.

There is a separate exemption from Sch 13 paras 32-52 for items subject to legal privilege: Sch 13 paras 35(1), 48(1). Items 'subject to legal privilege' means (i) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client; (ii) communications between a professional legal adviser and his client or any person representing his client, or between such an adviser or his client or any such representative and any other person, made in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings; (iii) items enclosed with or referred to in such communications and made in connection with the giving of legal advice or in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings, when they are in possession of a person entitled to such possession: Sch 13 paras 35(2), 48(2). Items held with the intention of furthering a criminal purpose are not subject to legal privilege: Sch 13 paras 35(3), 48(3). The Inland Revenue may make provision by regulations for the purposes of Sch 13 paras 32-42 for the resolution of disputes as to whether a document or part of a document is an item subject to legal privilege; and such regulations may, in particular, make provision as to (A) the custody of the document whilst its status is being decided; (B) the appointment of an independent, legally-qualified person to decide the matter; (C) the procedures to be followed; and (D) who is to meet the costs of the proceedings: Sch 13 para 36. Such regulations may contain such incidental, supplementary and transitional provision as appears to the Inland Revenue to be appropriate: Sch 13 para 42. As to the making of such regulations, see PARA 1117A.2 NOTE 5. See SI 2003/2837.

7 Finance Act 2003 Sch 13 para 40(1). 'Court' for this purpose means, in relation to an order made by a circuit judge, the Crown Court: Sch 13 para 40(2)(a).

8 Ibid Sch 13 para 38. If a request for permission to be granted access to a document that has been so delivered to an officer of the Board and is retained by the Board for the purposes of investigating an offence, is made to the officer in charge of the investigation by a person who had custody or control of the document immediately before it was so delivered, or by someone acting on behalf of any such person, the officer must allow that person access to the document under the supervision of an officer of the Board: Sch 13 para 39(1). If a request for a photograph or copy of any such document is made to the officer concerned by such a person, or by a person acting on behalf of such a person, the officer must allow the person who made the request access to the document under the supervision of an officer of the Board for the purpose of photographing or copying it, or himself photograph or copy it or cause it so be photographed or copied: Sch 13 para 39(2). Where the document is photographed or copied by the officer or at his direction, the photograph or copy must be supplied to the person who made the request, within a reasonable time from the making of the request: Sch 13 para 39(3), (4). However, the officer may deny access, and any photograph or copy, if he has reasonable grounds for believing that to do otherwise would prejudice the investigation concerned, the investigation of an offence other than the offence for the purposes of the investigation of which the document was delivered, or any criminal proceedings that may be brought as a result of either investigation: Sch 13 para 39(5). The 'officer in overall charge of the investigation' is the person whose name and address are indorsed on the order concerned as being the officer so in charge: Sch 13 para 39(6).

9 Ibid s 94(1). A person who wilfully delays or obstructs an officer of the Board acting in pursuance of this provision commits an offence, and is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 94(2). As to the standard scale, see PARA 1026 NOTE 7. As to penalties generally, see PARA 1117A.35.

10 Ibid s 97. For the meaning of 'Inland Revenue', see PARA 1117A.3 NOTE 6.

11 Ibid s 98(1). The specified proceedings are (1) any criminal proceedings against the person in question for any form of fraudulent conduct in connection with or in relation to tax; (2) any proceedings against him for the recovery of any tax due from him; (3) any proceedings for a penalty or on appeal against the determination of a penalty: s 98(2).

### 35. Offences and penalties; in general

A person commits an offence if he is knowingly concerned in the fraudulent evasion of tax by him or any other person[1].

A person who assists in or induces the preparation or delivery of any information, return or other document that he knows will be, or is likely to be, used for any purpose of stamp duty land tax, and which he knows to be incorrect, is liable to a penalty not exceeding £3,000[2].

An officer of the Board authorised for the purpose may make a determination imposing a penalty under the stamp duty land tax provisions[3] and setting it at such amount as in the officer's opinion is correct or appropriate, and notice of the determination must be served on the person liable to the penalty[4]. The notice must state the date on which it is issued and the time within which an appeal against the determination may be made, which is 30 days from the date of issue of the notice[5]. A penalty so determined is due and payable at the end of the period of 30 days beginning with the date of issue of the notice of determination[6].

If it is discovered by an officer authorised by the Board for the purpose that the amount of the penalty is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which in the officer's opinion is correct or appropriate; and if, in the case of a tax-related penalty, it is discovered by such an officer that the amount taken into account as the amount of tax is or has become excessive, he may revise the determination so that the penalty is set at the amount that is correct[7].

An appeal may be made to the tribunal against the determination of a penalty; and notice of appeal must be given in writing to the officer of the Board by whom the determination was made, within 30 days of the date of issue of the notice of determination[8]. The notice of appeal must specify the grounds of appeal[9]. A further appeal, at the instance of the person liable to the penalty, against the amount of that penalty, lies to the Upper Tribunal[10].

Where, in the opinion of the Board, the liability of a person for a penalty arises by reason of his fraud, or the fraud of another person, proceedings for the penalty may be brought in the High

Court, by and in the name of the Board[11] or in the name of the Attorney-General, and any such proceedings are deemed to be civil proceedings[12] by the Crown[13]. If in such proceedings, the court does not find that fraud is proved, but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty, notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court[14].

In general, no penalty may be determined by an authorised officer, and no penalty proceedings may be begun before the court, more than six years after the date on which the penalty was incurred or, in the case of a daily penalty, began to be incurred, but where the amount of a penalty is to be ascertained by reference to the tax chargeable in respect of a transaction, the time limit is three years after the final determination of the amount of the tax concerned[15].

The Board may, in its discretion, mitigate any such penalty, or stay or compound any proceedings for its recovery, or, after judgment, further mitigate or entirely remit the penalty[16].

Where a person is liable to more than one tax-related penalty in respect of the same land transaction, each penalty after the first is reduced so that his liability to such penalties, in total, does not exceed the amount of whichever is (or, but for this provision, would be) the greatest penalty[17].

1 Finance Act 2003 s 95(1). Such a person is liable (1) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both; or (2) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both: s 94(2). As to the statutory maximum, see PARA 1113 NOTE 2.

2 Ibid s 96. Such a penalty may be determined by an authorised officer, or penalty proceedings begun before a court, at any time within 20 years after the date on which it was incurred: Sch 14 paras 1, 8(5).

3 Ie ibid Pt 4 (ss 42-124): see PARAS 1117A.1 et seq, 1117A.36 et seq. However, nothing in the stamp duty land tax provisions affects any criminal proceedings for an offence: s 99(3).

4 Ibid s 99(1), Sch 14 paras 1, 2(1), (2). Where an officer has decided to impose a penalty, and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the determination: Sch 14 para 2(5). As to the service of notice, see PARA 1117A.4 NOTE 16.

5 Ibid Sch 14 paras 2(3), 5(2).

6 Ibid Sch 14 para 2(4). If a person liable to a penalty has died, any determination that could have been made in relation to him may be made in relation to his personal representatives, and any penalty imposed on them is a debt due and payable out of the person's estate: Sch 14 para 4.

7 Ibid Sch 14 para 3(2)-(4). Where more than the correct amount has already been paid, the appropriate amount must be repaid: Sch 14 para 3(3). After notice has been served of the determination of a penalty, the determination may only be altered in accordance with Sch 14 para 3: Sch 14 para 3(1).

8 Ibid Sch 14 para 5(1), (2) (Sch 14 para 5(1) amended by SI 2009/56). As to the tribunal see INCOME TAXATION.

9 Finance Act 2003 Sch 14 para 5(3) (amended by SI 2009/56). On an appeal that is notified to the First-tier tribunal, that tribunal may (1) if it appears that no penalty has been incurred, set the determination aside; (2) if the amount determined appears to be appropriate, confirm the determination; (3) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as appears to be appropriate; (4) if the amount determined appears to be insufficient, increase it to such amount, not exceeding the permitted maximum, as appropriate: Finance Act 2003 Sch 14 para 5(4) (amended by SI 2009/56). The provisions of the Finance Act 2003 Sch 10 paras 36A-36I (see PARA 1117A.29) apply to appeals under Sch 14 para 5: Sch 14 para 5(5) (added by SI 2009/56).

10 Finance Act 2003 Sch 14 para 6(1) (substituted by SI 2009/56). This is in addition to any right of appeal on a point of law under the Tribunals, Courts and Enforcement Act 2007 s 11(2) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7). However, the right of appeal does not extend to a decision which falls under the Finance Act 2003 s 11(5)(d) and was made in connection with the determination of the amount of the penalty: Sch 14 para 6(1) (substituted by SI 2009/56). The Tribunals, Courts and Enforcement Act 2007 s 11(3), (4) (see

ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7) applies to the right of appeal under the Finance Act 2003 Sch 14 para 6(1) as it applies to the right of appeal under the Tribunals, Courts and Enforcement Act 2007 s 11(2): Finance Act 2003 Sch 14 para 6(1A) (substituted by SI 2009/56). On appeal, the Upper Tribunal has the same powers as the First-tier Tribunal (see NOTE 9): Finance Act 2003 Sch 14 para 6(2) (amended by SI 2009/56).

11 Ie as an authorised department for the purposes of the Crown Proceedings Act 1947. For the meaning of 'the Board', see PARA 1117A.1.

12 Ie within the meaning of ibid Pt 2 (ss 13-23): see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARAS 107-109, 115 et seq.

13 Finance Act 2003 Sch 14 para 7(1), (2). These provisions apply to the exclusion of Sch 14 para 2: Sch 14 para 7(6).

14 Ibid Sch 14 para 7(5).

15 Ibid Sch 14 para 8(1)-(3). As from a day to be appointed, the period of six years is reduced to four: Sch 14 para 8(2) (amended by Finance Act 2009 Sch 51 para 16(2)(a)). As from a day to be appointed, the Finance Act 2003 Sch 10 para 31A (see PARA 1117A.28) applies for the purposes of Sch 14 para 8 where a penalty is incurred for a loss of tax brought about carelessly or deliberately: see Sch 14 para 8(3), (4A)-(4C) (Sch 14 para 8(3) amended, Sch 14 para 8(4A)-(4C) added, by Finance Act 2009 Sch 51 para 16(3), (4)). Where a person has died, and any determination would be made on his personal representatives. the extended time limit does not apply if the tax was charged in an assessment made more than six years after the effective date of the transaction to which it relates: Finance Act 2003 Sch 14 para 8(4). For the meaning of 'effective date', see PARA 1117A.3 NOTE 5. See also NOTE 2.

16 Ibid s 99(2).

17 Ibid s 99(2A) (added by Finance Act 2004 s 298(4)).

## 36. Special cases: companies, unit trust schemes, open-ended investment companies, persons acting in a representative capacity, and the Crown

Anything to be done by a company under the stamp duty land tax provisions[1] is to be done by the company acting through its proper officer[2] or another person for the time being having the express, implied or apparent authority of the company to act on its behalf for the purpose[3]. Service on a company of any document under or in pursuance of those provisions may be effected by serving it on the proper officer[4]. Tax due from a company that is not a body corporate, or that is incorporated under the law of a country or territory outside the United Kingdom, may, without prejudice to any other method of recovery, be recovered from the proper officer of the company[5].

With certain exceptions, the stamp duty land tax provisions apply in relation to a unit trust scheme as if the trustees were a company and the rights of the unit holders were shares in the company[6].

The Treasury may by regulations make such provision as it considers appropriate for securing that the stamp duty land tax provisions have effect in relation to open-ended investment companies of such description as may be prescribed in the regulations, and transactions involving such companies, in a manner corresponding, subject to such modifications as the Treasury considers appropriate, to the manner in which they have effect in relation to unit trust schemes and to transactions involving such trusts[7].

The person having the direction, management or control of the property of an incapacitated person is responsible for discharging any obligations under the stamp duty land tax provisions, in relation to a transaction affecting that property, to which the incapacitated person would be subject if he were not incapacitated; and may retain out of money coming into his hands on behalf of the incapacitated person sums sufficient to meet any payment he is liable so to make and, so far as he is not reimbursed, is entitled to be indemnified in respect of any such payment[8].

The parent or guardian of a minor is responsible for discharging any obligations of the minor under the stamp duty land tax provisions that are not discharged by the minor himself[9].

The personal representatives of a person who is the purchaser under a land transaction are responsible for discharging the obligations of the purchaser under the stamp duty land tax provisions in relation to the transaction, and may deduct any payment so made by them out of the assets and effects of the deceased person[10].

A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligation under the stamp duty land tax provisions in relation to a transaction affecting that property as if it were not under the direction and control of the court[11].

With certain exceptions, the stamp duty land tax provisions are binding on the Crown, but nothing therein requires the payment by any such office or department of tax that would ultimately be borne by the Crown or is to be read as making the Crown liable for prosecution for an offence[12].

1 Ie the Finance Act 2003 Pt 4 (ss 42-124): see PARAS 1117A.1 et seq, 1117A.37 et seq.

2 The proper officer of a body corporate is the secretary, or person acting as secretary, of the company; and the proper officer of an unincorporated association, or of a body corporate that does not have a secretary or acting secretary, is the treasurer, or person acting as treasurer, of the company: ibid s 100(4). This provision does not apply if a liquidator or administrator has been appointed for the company: s 100(4). See NOTE 3.

3 Ibid s 100(2). The reference to an authorised other person does not apply where a liquidator has been appointed for the company: s 100(2). If a liquidator or administrator has been appointed for the company, that person is the proper officer, and if two or more persons are appointed to act jointly or concurrently as the administrator of the company, the proper officer is (1) such one of them as is specified in a notice given to the Inland Revenue by those persons for the purposes of s 100; or (2) where the Inland Revenue is not so notified, such one or more of them as the Inland Revenue may designate as the proper officer for those purposes: s 100(7). For the meaning of 'company', see PARA 1117A.15 NOTE 3; and for the meaning of 'Inland Revenue', see PARA 1117A.3 NOTE 6.

4 Ibid s 100(3).

5 Ibid s 100(4). Such officer may retain out of money coming into his hands on behalf of the company sufficient sums to pay the tax concerned and, so far as he is not so reimbursed, is entitled to be indemnified by the company in respect of the liability so imposed on him: s 100(5).

6 Ibid s 101(1) (amended by Finance Act 2006 s 166(3)). The exception is the Finance Act 2003 Sch 7 (see PARAS 1117A.17, 1117A.18): s 101(7) (amended by Finance Act 2006 s 166(2)). 'Unit trust scheme' has the same meaning as in the Financial Services and Markets Act 2000 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603); and 'unit holder' means a person entitled to a share of the investments subject to the trusts of such a scheme: Finance Act 2003 s 101(4). Each of the parts of an umbrella scheme is treated for these purposes as a separate unit trust scheme and the scheme as a whole is not so regarded: ss 101(2), 102(4). An 'umbrella scheme' is a unit trust scheme that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and under which the participants are entitled to exchange rights in one pool for rights in another; and a 'part' of an umbrella scheme means such of the arrangements as relate to a separate pool: ss 101(3), 102(4). The Income and Corporation Taxes Act 1988 s 469A (see INCOME TAXATION vol 23(2) (Reissue) PARA 1443) applies for these purposes as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme: Finance Act 2003 s 101(6). A partnership is not regarded as a unit trust scheme or an open-ended investment company: Sch 15 para 4. For the meaning of 'partnership', see PARA 1117A.37 NOTE 8.

The Treasury may by regulations provide that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for these purposes, and any such regulations may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient: s 101(5). As to the making of such regulations, see PARA 1117A.2 NOTE 5.

7 Ibid s 102(1). 'Open-ended investment company' has the meaning given by the Financial Services and Markets Act 2000 s 236 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603): Finance Act 2003 s 102(4) (but see NOTE 6 in relation to partnerships). Such regulations may, in particular, make provision modifying the operation of any prescribed provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are

given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme; or treating the separate parts of the undertaking of such a company in relation to which such provision is made as distinct companies for these purposes: s 102(2). Such regulations may also make different provision for different cases and contain such incidental, supplementary, consequential and transitional provision as the Treasury thinks fit: s 102(3). As to the making of such regulations, see PARA 1117A.2 NOTE 5. See Stamp Duty Land Tax (Open-ended Investment Copmanies) Regulations 2008, SI 2008/710

8 Finance Act 2003 s 106(1).

9 Ibid s 106(2).

10 Ibid s 106(3).

11 Ibid s 106(4)

12 Ibid s 107(1), (4) (s 107(1) amended, s 107(4) added by the Finance Act 2004 Sch 39 para 21). The exceptions are that (1) a land transaction under which the purchaser is a minister of the Crown, the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly government (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq), the Corporate Officer of the House of Commons, or the Corporate Officer of the House of Lords is exempt; and (2) that the powers conferred by the Finance Act 2003 Sch 13 paras 43-52 (see PARA 1117A.34) are not exercisable in relation to premises occupied for the purposes of the Crown: s 107(2), (3) (s 107(2) amended by Government of Wales Act 2006 Sch 10 para 65). For the meaning of 'land transaction', see PARA 1117A.1.

## 37. Special cases: joint purchasers

Where two or more purchasers are or will be jointly entitled to the interest acquired under a land transaction then, in general:

317 (1) any obligation of the purchaser in relation to the transaction is an obligation of the purchasers jointly, but may be discharged by any of them;
318 (2) anything required or authorised by the stamp duty land tax provisions[1] to be done in relation to the purchaser must be done by or in relation to all of them; and
319 (3) any liability of the purchaser under those provisions in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within head (1) above) is a joint and several liability of all the purchasers[2].

However, the above rules are subject to the following exceptions:

320 (a) if the transaction is a notifiable transaction, a single land transaction return is required[3];
321 (b) any declaration that a return is correct and complete must be made by all the purchasers[4];
322 (c) if the Inland Revenue gives notice of an inquiry into the return:
29
44. (i) the notice must be given to each of the purchasers;
45. (ii) the powers of the Inland Revenue as to the production of documents and provision of information for the purposes of the inquiry are exercisable separately (and differently) in relation to each of the purchasers;
46. (iii) any of the purchasers may apply for a direction that a closure notice be given (and all of them are entitled to be parties to the application); and
47. (iv) the closure notice must be given to each of the purchasers[5];
30
323 (d) a Revenue determination or discovery assessment relating to the transaction must be made against all the purchasers and is not effective against any of them unless notice thereof is given to each of them whose identity is known to the Inland Revenue[6];

324 (e) in the case of an appeal arising from proceedings under the stamp duty land tax provisions relating to the transaction:

31

48. (i) the appeal may be brought by any of the purchasers;
49. (ii) notice of the appeal must be given to any of them by whom it is not brought;
50. (iii) the agreement of all the purchasers is required if the appeal is to be settled by agreement;
51. (iv) if it is not settled, and is notified to the tribunal any of them is entitled to be a party to the appeal ; and
52. (v) the decision on the appeal binds all of them[7].

32

1 Ie the Finance Act 2003 Pt 4 (ss 42-124): see PARAS 1117A.1 et seq, 1117A.38 et seq.

2 Ibid s 103(1), (2). For the meaning of 'land transaction', see PARA 1117A.1; and for the meaning of 'purchaser', see PARA 1117A.2.

3 Ibid s 103(3). For the meaning of 'land transaction return' and 'notifiable transaction', see PARA 1117A.25.

4 Ibid s 103(4) (amended by Finance Act 2008 Sch 30 para 4(2)). The declaration is that referred to in the Finance Act 2003 Sch 10 para 1(1)(c) (see PARA 1117A.25): s 103(4) (amended by Finance Act 2008 Sch 30 para 4).

5 Finance Act 2003 s 103(5) (amended by Finance Act 2008 Sch 30 para 4(3); and SI 2009/56). As to inquiries generally, and for the meaning of 'closure notice' see PARA 1117A.27.

6 Finance Act 2003 s 103(6). As to Revenue determinations and discovery assessments, see PARA 1117A.28.

7 Ibid s 103(7) (amended by SI 2009/56). The Finance Act 2003 s 103 is subject to the provisions of Sch 15 (see PARA 1117A.38) and Sch 16 (see PARA 1117A.39): s 103(8). Where two or more purchasers make a single return in respect of linked transactions, s 103 applies as if the transactions in question were a single transaction, and those purchasers were purchasers acting jointly: s 108(3).

In a case where s 103(7) applies and some (but not all) of the purchasers require the Inland Revenue to undertake a review under Sch 10 para 36B or 36C (1) notification of the review must be given by the Inland Revenue to each of the other purchasers whose identity is known to the Inland Revenue; (2) any of the other purchasers may be a party to the review if he notifies the Inland Revenue in writing; (3) the notice of the Inland Revenue's conclusions must be given to each of the other purchasers whose identity is known to the Inland Revenue; (4) Sch 10 para 36F (see PARA 1117A.29) applies in relation to all of the purchasers; and (5) any of the purchasers may notify the appeal to the tribunal under Sch 10 para 36G (see PARA 1117A.29): s 107(7A) (added by SI 2009/56).

### 38. Special cases: partnerships

For the purposes of the stamp duty land tax provisions[1], a chargeable interest held on behalf of a partnership is treated as held by or on behalf of the partners, and a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of all of the partners[2]. A partnership is treated as the same partnership, notwithstanding a change in membership, if any person who was a member before the change remains a member after the change[3].

In relation to a transaction entered into as purchaser by or on behalf of the members of a partnership, anything required or authorised to be done under the stamp duty land tax provisions by or in relation to the purchaser under any transaction is required or authorised to be done by or in relation to all the responsible partners[4]. Where the responsible partners are liable to make a payment of tax or to interest on unpaid tax, to make a payment in accordance with an assessment[5], or to a penalty or to interest on a penalty, the liability is a joint and several liability of those partners[6].

However, where:

325 (1) a partner transfers a chargeable interest[7] to the partnership; or
326 (2) a person transfers a chargeable interest to a partnership in return for an interest in the partnership; or
327 (3) a person connected[8] with a partner, or with a person who becomes a partner as a result of or in connection with the transfer, transfers a chargeable interest to the partnership,

the chargeable consideration for the transaction is taken to be equal to:

$$MV \times (100 - SLP)\%$$

where MV is the market value of the interest transferred, and SLP is the sum of the lower proportions[9].

Where:

328 (a) there is a transfer of an interest in a property-investment partnership[10];
329 (b) the relevant partnership property includes a chargeable interest,

the transfer is taken for the purposes of the stamp duty land tax provisions to be a land transaction which is a chargeable transaction[11].

The 'relevant partnership property', in relation to a Type A transfer[12] of an interest in a partnership is every chargeable interest held as partnership property immediately after the transfer, other than:

330 (i) any chargeable interest that was transferred to the partnership in connection with the transfer;
331 (ii) a lease held as partnership property immediately after the transfer, provided that:

33

53. (A) no chargeable consideration other than rent has been given in respect of the grant of the lease and no arrangements are in place at the time of the transfer or any such consideration to be so given;
54. (B) the rent payable under the lease as granted was a market rent[13] at the time of the grant;
55. (C) the term of the lease is five years or less or, if the term of the lease is more than five years, the lease provides for the rent payable thereunder to be reviewed at least once in every five years of the term, and the rent so payable as a result of a review is required to be a market rent at the review date[14];
56. (D) there has been no change to the lease since it was granted which is such that, immediately after the change has effect, the rent payable under the lease is less than a market rent;

34

332 (iii) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred[15].

Where there is a transfer of a chargeable interest in a partnership which falls within head (1), (2) or (3) above, and:

333 (aa) there is subsequently a transfer of an interest in the partnership ('the partnership transfer');

334 (bb) the partnership transfer is made by the person who makes the land transfer (in a case falling within head (1) or (2) above) or by the partner concerned (in a case falling within head (3) above);
335 (cc) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer; and
336 (dd) the partnership transfer is not otherwise a chargeable transfer,

the partnership transaction is taken for the purposes of the stamp duty land tax provisions to be a land transaction which is a chargeable transaction[16].

Where a chargeable interest is transferred from a partnership[17] to a person who is or has been one of the partners, or from a partnership to a person connected with such a person, the chargeable consideration for the transaction is taken to be equal to[18]:

$$MV \times (100 - SLP)\%$$

where MV is the market value of the interest transferred, and SLP is the sum of the lower proportions[19].

1 Ie the Finance Act 2003 Pt 4 (ss 42-124): see PARAS 1117A.1 et seq, 1117A.39 et seq.

2 Ibid s 104, Sch 15 para 2(1). Schedule 15 para 2(1) applies notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed: Sch 15 para 2(2). A 'partnership' is a partnership within the Partnership Act 1890 (see PARTNERSHIP vol 79 (2008) PARA 1 et seq); a limited partnership registered under the Limited Partnerships Act 1907 (see PARTNERSHIP vol 79 (2008) PARA 218 et seq); or a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (see PARTNERSHIP vol 79 (2008) PARA 234 et seq); or a firm or entity of a character similar to any such entity, formed under the law of a country or territory outside the United Kingdom: Finance Act 2003 Sch 15 para 1. For the meaning of 'chargeable interest', see PARA 1117A.2.

3 Ibid Sch 15 para 3. A partnership is not regarded as a unit trust scheme or an open-ended investment company: Sch 15 para 4.

4 Ibid Sch 15 paras 5, 6(1) (Sch 15 para 5 amended by Finance Act 2004 Sch 41 para 2(c)). The responsible partners in relation to a transaction are the persons who are partners at the effective date of the transaction, and any person who becomes a member of the partnership after that date: Finance Act 2003 Sch 15 para 6(2). However, anything required or authorised to be done by or in relation to the responsible partners may instead by done by or in relation to any representative partner or partners, ie a partner or partners nominated by a majority of the partners to act as the representative of the partnership for these purposes; but any such nomination, or revocation of such nomination, has effect only if notice thereof has been given to the Inland Revenue: Sch 15 paras 6(3), 8(1), (3), (4). This includes making the declaration referred to in Sch 10 para 1(1)(c) (see PARA 1117A.25): Sch 15 para 8(2) (amended by Finance Act 2008 Sch 30 para 12). For the meaning of 'Inland Revenue' and 'effective date' see PARA 1117A.3.

5 Ie an assessment under the Finance Act 2003 Sch 10 para 29: see PARA 1117A.28.

6 Ibid Sch 15 para 7(1). However, no amount may be recovered in respect of a penalty or interest thereon from a person who did not become a responsible partner until after the relevant time, ie (1) in relation to so much of a penalty as is payable in respect of any day, or to interest on so much of a penalty as is so payable, the beginning of that day; and (2) in relation to any other penalty, or to interest on such a penalty, the time when the act or omission occurred that caused the penalty to become payable: Sch 15 paras 7(2), (3), 16(4). Similarly, no amount may be recovered by way of interest or excessive repayment from a person who did not become a responsible partner until after the effective date of the transaction in respect of which the tax is payable: Sch 15 para 7(1A) (added by Finance Act 2004 s 305).

7 References in the Finance Act 2003 Sch 15 paras 9-40 to the transfer of a chargeable interest include (1) the grant or creation of a chargeable interest; (2) the variation of a chargeable interest; and (3) the surrender, release or renunciation of a chargeable interest: Sch 15 para 9(2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1). There is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property; and any reference to 'partnership property' is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business: Finance Act 2003 Sch 15 paras 34(1), 35.

8 The Income and Corporation Taxes Act 1988 s 839 (meaning of 'connected persons') (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258) has effect for this purpose with the omission of s 839(4) (partners connected with each other): Finance Act 2003 Sch 15 para 39. For the purposes of Sch 15 paras 12, 20, the 1988 Act s 839 has effect with the omission of s 839(3)(c): Finance Act 2003 Sch 15 para 39(3) (added by Finance Act 2007 s 72(11)).

9 Finance Act 2003 Sch 15 para 10(2) (substituted by Finance Act 2006 Sch 24 para 2). The sum of the lower proportions is determined as follows: (1) identify the relevant owner or owners; (2) for each relevant owner, identify the corresponding partner or partners; (3) for each relevant owner, find the proportion of the chargeable interest to which he was entitled immediately before the transaction and apportion that proportion among any one or more of the relevant owner's corresponding partners; (4) find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners; and (5) add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners: Finance Act 2003 Sch 15 para 12(1). A person is a 'relevant owner' if, immediately before the transaction, he was entitled to a proportion of the chargeable interest and, immediately after the transaction, he is a partner or connected with a partner: Sch 15 para 12(1). A person is a 'corresponding partner' in relation to a relevant owner if, immediately after the transaction, he is a partner and the relevant owner (or is an individual connected with the relevant owner): Sch 15 para 12(1). A company is treated as an individual connected with the relevant owner insofar as it holds property as trustee and is connected with the relevant owner only because of the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION): Finance Act 2003 Sch 15 para 12(3) (added by Finance Act 2007 s 72(3)). Where a company (the 'connected company') would have been a corresponding partner of a relevant owner (the 'original owner') had it been an individual, and the connected company and the original owner are members of the same group, the charge in respect of the transaction is reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purpose of calculating the sum of the lower proportions: Finance Act 2003 Sch 15 para 27A(1), (2) (Sch 15 para 27A added by Finance Act 2007 s 72(9)). The provisions of the Finance Act 2003 Sch 7 Pt 1 (paras 1-6) (see PARA 1117A.17) apply for these purposes with the omission of Sch 7 para 2(2)(a); with the substitution in Sch 7 para 3(1)(a) for 'the purchaser' of 'a partner who was, at the effective date of the transaction, a partner and a member of the same group as the transferor ('the relevant partner')'; and with the other modifications specified in Sch 15 para 27(3)-(6) (see PARA 1117A.17).

The lower proportion is the proportion of the chargeable interest attributable to the partner or, if lower, the partner's partnership share immediately after the transaction: Sch 15 para 12(1) (amended by Finance Act 2007 s 72(1), (3)). If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil: Finance Act 2003 Sch 15 para 12(1). The proportion of the chargeable interest attributable to the partner is (a) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (under head (3)) in respect of that owner, and (b) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest so apportioned to him in respect of each of those owners: Sch 15 para 12(1). Persons entitled to chargeable interests as beneficial joint tenants are taken to be entitled to the chargeable interest as beneficial tenants in common: Sch 15 para 12(2). Any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profits of the partnership: Sch 15 para 34(2). For the meaning of 'market value', see PARA 1117A.9 NOTE 3; and for the meaning of 'chargeable consideration', see PARA 1117A.7 et seq.

If the whole or part of the chargeable consideration for a transaction falling within Sch 15 para 10 or Sch 15 para 18 is rent Sch 5 (see PARA 1117A.12) applies, with the following modifications: (i) as if in Sch 5 para 2 for 'the net present value of the rent payable over the term of the lease' there were substituted 'the relevant chargeable proportion of the net present value of the rent payable over the term of the lease; and for 'the net present values of the rent payable over the term of all the leases' there were substituted 'the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases'; (ii) as if in Sch 5 para 9A(6) for 'the annual rent' there were substituted 'the relevant chargeable proportion of the annual rent; and for 'the total of the annual rents' there were substituted 'the relevant chargeable proportion of the total of the annual rents'; and (iii) as if for Sch 5 para 9(4) there were substituted 'Tax chargeable under this Schedule is in addition to any tax chargeable under s 55 as it has effect by virtue of Sch 15 para 10': Sch 15 paras 11(2), (2A)-(2C) (Sch 15 paras 11(2)-(2D), 19(2)-(2D) substituted by Finance Act 2006 Sch 24 paras 3, 6; and amended by Finance Act 2008 s 95(11)). The 'relevant chargeable proportion' is (100 x SLP)%, where SLP is the sum of the lower proportions: Finance Act 2003 Sch 15 paras 11(2D), 19(2D). For the meaning of 'rent', see PARA 1117A.8.

Where there is a transaction to which Sch 15 para 18 applies, immediately after the transaction all the partners are bodies corporate, and the sum of the lower proportions is 75 or more, Sch 15 paras 18, 19, 23 have effect with the following modifications: (A) for Sch 15 para 18(2), (5) there is substituted 'The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred'; (B) Sch 15 para 19(2A), (2B), (2D), and (8) and Sch 15 para 19(2A), (2B), (2D), (8) and references thereto in Sch 15 paras 11(2), 19(2) are omitted : Sch 15 para 24 (amended by Finance Act 2006 Sch 24 para 7). See also NOTE 20.

Where (aa) there is a transfer of a chargeable interest to a partnership ('the land transfer'); (bb) the land transfer falls within head (1), (2) or (3) in the TEXT; (cc) during the period of three years beginning with the date of the land transfer, a qualifying event occurs; and (dd) at the time of the qualifying event, an election has not

been made in respect of the land transfer under the Finance Act 2003 Sch 15 para 12A, that event is taken to be a land transaction and is a chargeable transaction: Sch 15 para 17A(1), (4) (Sch 15 para 17A added by Finance (No 2) Act 2005 Sch 10 para 10; Finance Act 2003 Sch 15 para 17A(1) amended by Finance Act 2008 Sch 31 para 8). A 'qualifying event' is (1) a withdrawal from the partnership of money or money's worth which does not represent income profits, by the relevant person (a) withdrawing capital from his capital account, (b) reducing his interest, or (c) ceasing to be a partner; or (2) in a case where the relevant person has made a loan to the partnership (a) the repayment (to any extent) by the partnership of the loan, or (b) a withdrawal by the relevant person from the partnership of money or money's worth which does not represent income profit: Finance Act 2003 Sch 15 para 17A(2). The partners are taken to be the purchasers under the transaction; and the chargeable consideration is taken to be (i) in a case falling within head (1), equal to the value of the money or money's worth withdrawn from the partnership, (ii) in a case falling within head (2)(a), equal to the amount repaid, and (iii) in a case falling within head (2)(b), equal to so much of the value of the money or money's worth withdrawn from the partnership as does not exceed the amount of the loan: Sch 15 para 17A(5), (7). In any case, the chargeable consideration is not to exceed the market value (as at the effective date of the land transfer) of the chargeable interest transferred thereby, reduced by any amount previously chargeable to tax: Sch 15 para 17A(7). The 'relevant person' is, where head (1) or (2) of the TEXT applies, the person who makes the land transfer, and where head (3) of the TEXT applies, the partner concerned or a person connected with him: Sch 15 para 17A(3). Schedule 15 paras 6-8 have effect in relation to the transaction: Sch 15 para 17A(6). Where a qualifying event gives rise to a charge under Sch 15 para 17A and the same event gives rise to a charge under Sch 15 para 14, the amount of the former charge is reduced (but not below nil) by the amount of the latter: Sch 15 para 17A(8) (added by Finance Act 2006 Sch 24 para 10). See also NOTE 18.

10 'Property-investment partnership' means a partnership the sole or main activity of which is investing or dealing in chargeable interests (whether or not that activity involves the carrying out of construction operations on the land in question); and 'construction operations' has the same meaning as in the Finance Act 2004 s 74 (see INCOME TAXATION): Finance Act 2003 Sch 15 para 14(8) (added by Finance Act 2006 Sch 24 para 9). Where a person acquires or increases a partnership share there is a transfer of an interest in the partnership (to that partner and from the other partners): Finance Act 2003 Sch 15 para 36 (Sch 15 para 36 substituted by Finance Act 2007 s 72(10)),

11 Finance Act 2003 Sch 15 para 14(1), (2) (Sch 15 para 14(1) amended by Finance Act 2006 Sch 24 para 9; and Finance Act 2007 s 72(1), (6)). The purchaser under the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer: Finance Act 2003 Sch 15 para 14(3). An interest to which this provision applies is treated as a chargeable interest for the purposes of Sch 7 para 3(1) (see PARA 1117A.17) to the extent that the relevant partnership property consists of a chargeable interest: Sch 15 para 14(9) (added by Finance Act 2007 s 72(1), (6)).

12 A transfer is a Type A transfer if (1) it takes the form of arrangements entered into under which (a) the whole or part of a partner's interest as partner is acquired by another person (who may be an existing partner), and (b) consideration in money or money's worth is given by or on behalf of the person acquiring the interest; or (2) it takes the form of arrangements entered into under which (a) a person become a partner, (b) the interest of an existing partner in the partnership is reduced or an existing partner ceases to be a partner, and (c) there is a withdrawal of money or money's worth from the partnership by that existing partner (other than money or money's worth paid from the resources available to the partnership prior to the transfer): Finance Act 2003 Sch 15 para 14(3A), (3B) (Sch 15 para 14(3A)-(3C) added by Finance Act 2008 Sch 31 para 1). Any other transfer is a Type B transfer: Finance Act 2003 Sch 15 para 14(3C).

13 The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market: ibid Sch 15 para 15(6).

14 A review date is a date from which the rent determined as a result of a rent review is payable: ibid Sch 15 para 15(7).

15 Ibid Sch 15 paras 14(5), 15(1)-(5) (Sch 15 para 15(1) amended by Finance Act 2008 Sch 31 para 2). 'Relevant partnership property' in relation to a Type B transfer (see note 12(a)) of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than (1) any chargeable interest that was transferred to the partnership in connection with the transfer; (2) a lease to which Sch 15 para 15 (see head (ii) of the TEXT) applies; (3) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred; (4) any chargeable interest that was transferred to the partnership on or before 22 July 2004; (5) any chargeable interest in respect of the transfer of which to the partnership an election has been made under the Finance Act 2003 Sch 15 para 12A; and (6) any other chargeable interest the transfer of which to the partnership did not fall within Sch 15 para 10(1)(a), (b) or (c): Sch 15 para 14(5A) (added by Finance Act 2008 Sch 31 para 1). 'Arrangements' includes any scheme, agreement or understanding, whether or not legally enforceable: Finance Act 2003 Sch 15 para 40. The chargeable consideration for the transaction is taken to be equal to a proportion of the market value of the relevant partnership property, which proportion is (1) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer; and (2) if he was a

partner before the transfer, the difference between his partnership share before and after the transfer: Sch 15 para 14(6), (7).

16 Ibid Sch 15 para 17(1), (2). The partners are taken to be the purchasers under the transaction, and the chargeable consideration therefor is taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer: Sch 15 para 17(3), (4). That proportion is (1) if the person making the partnership transfer is not a partner immediately after the transfer, his partnership share immediately before the transfer; and (2) if he is a partner immediately after the transfer, the difference between the partnership share before and after the transfer: Sch 15 para 17(5). The partnership transfer and the land transfer are taken to be separate transactions: Sch 15 para 17(6). Schedule 15 paras 6-8 have effect have effect in relation to the partnership transfer, but the responsible partners are (a) those who were partners immediately before the transfer and who remain partners thereafter; and (b) any person becoming a partner as a result of, or in connection with, the transfer: Sch 15 para 17(7).

17 For this purpose, there is a transfer of a chargeable interest from a partnership in any case where (1) a chargeable interest that was partnership property ceases to be joint partnership property; or (2) a chargeable interest is granted or created out of partnership property and the interest is not partnership property: ibid Sch 15 para 37. Partnership property that was partnership property before the partnership was dissolved or otherwise ceased to exist is treated as remaining partnership property until it is distributed: Sch 15 para 18(8).

18 Ibid Sch 15 para 18(2) (substituted by Finance Act 2006 Sch 24 para 2). The sum of the lower proportions is determined as follows: (1) identify the relevant owner or owners; (2) for each relevant owner, identify the corresponding partner or partners; (3) for each relevant owner, find the proportion of the chargeable interest to which he was entitled immediately before the transaction and apportion that proportion among any one or more of the relevant owner's corresponding partners; (4) find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners; and (5) add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners: Finance Act 2003 Sch 15 para 20(1). A person is a 'relevant owner' if, immediately before the transaction, he is entitled to a proportion of the chargeable interest and, immediately after the transaction, he is a partner or connected with a partner: Sch 15 para 20(1). A person is a 'corresponding partner' in relation to a relevant owner if, immediately before the transaction, he was a partner and the relevant owner (or was an individual connected with the relevant owner): Sch 15 para 20(1) (amended by Finance Act 2007 s 72(7)). A company is treated as an individual connected with the relevant owner in so far as it holds property as trustee and is connected with the relevant owner only because of the Income and Corporation Taxes Act 1988 s 839 (see INCOME TAXATION): Finance Act 2003 Sch 15 para 20(3) (added by Finance Act 2007 s 72(8)). The lower proportion is the proportion of the chargeable interest attributable to the partner or, if lower, the partner's partnership share attributable to the partner: Finance Act 2003 Sch 15 para 20(1). If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil: Sch 15 para 20(1). The proportion of the chargeable interest attributable to the partner is (a) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (under head (3)) in respect of that owner, and (b) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest so apportioned to him in respect of each of those owners: Sch 15 para 20(1). Persons entitled to chargeable interests as beneficial joint tenants are taken to be entitled to the chargeable interest as beneficial tenants in common: Sch 15 para 20(2). Any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profits of the partnership: Sch 15 para 34(2). Transitional provisions apply to establish the partnership share for the purposes of Sch 15 para 20 where the effective date of the transfer of the relevant chargeable interest to the partnership was before 20 October 2003, or where that date was on or after 20 October 2003 and (a) the instrument by which the transfer was effected has been duly stamped with ad valorem stamp duty, or (b) any tax payable in respect thereof has been duly paid under the stamp duty land tax provisions: Sch 15 paras 21, 22. For the provisions which apply where all or part of the consideration is rent, see NOTE 10.

19 Ibid Sch 15 para 18(1). If the grant of the lease is or was a transaction to which Sch 15 para 10 applies or applied (or a transaction to which that provision would have applied had it been in force at the time of the grant), or if the grant of a the lease is a transaction to which Sch 15 para 18 applies, then in determining the market value of the lease, an obligation of the tenant under the lease is to be taken into account if (but only if) it is an obligation such as is mentioned in Sch 17A para 10(1) (see PARA 1117A.7 NOTE 8) or it is an obligation to make a payment to a person: Sch 15 para 38.

Where there is a transfer of a chargeable interest from a partnership to a partnership and the transfer is both a transaction to which Sch 15 paras 10 and 18 apply, then Sch 15 paras 10(2), 18(2) do not apply; and the chargeable consideration for the transaction is taken to be what it would have been if Sch 15 para 10(2) had applied (or, if greater, what it would have been if Sch 15 para 18(2) had applied): Sch 15 para 23(1), (2) (Sch 15 para 23(2), (2A), (3) substituted by Finance Act 2006 Sch 24 para 8). Where the whole or part of the chargeable consideration for the transaction is rent, then (1) the Finance Act 2003 Sch 15 paras 11, 19 do not apply; (2) the tax chargeable in respect of so much of the chargeable consideration as consists of rent is taken to be what it would have been if Sch 15 para 11 had applied (or, if greater, what it would have been if Sch 15 para 19 had applied); and (3) the disapplication of the 0 per cent band provided for by Sch 5 para 9A(6) has effect as if Sch

15 para 11(2B) (or, as the case may be, Sch 15 para 19(2B)) had applied: Sch 15 para 23(1), (3) (Sch 15 para 23(3) amended by Finance Act 2008 s 95(11)).

The Finance Act 2003 Sch 15 para 10 does not apply to a transfer of a chargeable interest to a property-investment partnership if the purchaser in relation to the transaction so elects, and if an election is made Sch 15 para 18 is also disapplied. Further, the chargeable consideration for the transaction is taken to be the market value of the chargeable interest transferred, and the transaction falls within Sch 15 paras 5-8 (see PARA 1117A.17): Sch 15 para 12A(1), (2) (Sch 15 para 12A added by Finance Act 2008 Act Sch 31 para 6). Such an election must be included in the land transaction return made in respect of the transaction or in an amendment of that return. It is irrevocable, and may not be withdrawn by amending the return: Finance Act 2003 Sch 15 para 12A(3), (4). Where an election is made in respect of a transaction (the 'main transaction') in an amendment of a land transaction return, it has effect as if it had been made on the date on which that return was made, and any land transaction return made in respect of an affected transaction may be amended (within the period allowd for amendment of that return) to take account of that election: Sch 15 para 12A(5). 'Affected transaction', in relation to the main transaction, means a transaction to which Sch 15 para 14 applied, and with an effective date on or after the effective date of the main transaction: Sch 15 para 12A(6).

Where Sch 15 para 10, 14, 17 or 18 applies Sch 3 para 1 (see PARA 1117A.8) does not apply: Sch 15 para 25(1). Subject to specified amendments, the other provisions of the stamp duty land tax legislation affording exemptions or reliefs have effect in relation to partnership transactions: Sch 15 para 25(2).

## 39. Special cases: trusts and powers

Where a person acquires a chargeable interest or an interest in a partnership as bare trustee, the stamp duty land tax provisions[1] apply as if the interest were vested in, and the acts of the trustee in relation to it were the acts of, the person or persons for whom he is trustee[2]. 'Bare trust' means a trust under which property is held by a person as trustee for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being a minor or other person under a disability, or for two or more persons who would be jointly so entitled, and includes a case in which a person holds property as nominee for another[3].

Where persons acquire a chargeable interest or an interest in a partnership as trustees of a settlement, they are treated for the purposes of the stamp duty land tax provisions as they apply to that acquisition, as purchasers of the whole of the interest acquired, including the beneficial interest[4]; and where the trustees of a settlement are liable to make a payment of tax or of interest on unpaid tax, to make a payment in accordance with an assessment[5], or to a penalty or to interest on a penalty, the payment, penalty or interest may be recovered (but only once) from any one or more of the responsible trustees[6].

A return in relation to a land transaction may be made or given by any one or more of the trustees ('the relevant trustees') who are the responsible trustees in relation to the transaction[7].

Where a chargeable interest is acquired by virtue of the exercise of a power of appointment, or the exercise of a discretion vested in trustees of a settlement, there is treated as consideration for the resultant acquisition of the interest or right any consideration given in return for the person in whose favour the appointment was made, or the discretion was exercised, becoming an object of that power or discretion[8].

Where the trustees of a settlement reallocate trust property in such a way that a beneficiary acquires an interest in certain trust property and ceases to have an interest in other trust property, and the beneficiary consents to ceasing to have an interest in that other property, the fact that he gives consent does not mean that there is chargeable consideration for the acquisition[9].

1 Ie the Finance Act 2003 Pt 4 (ss 42-124): see PARAS 1117A.1 et seq, 1117A.38 et seq.

2 Ibid s 105, Sch 16 para 3(1) (Sch 16 para 3 substituted by Finance (No 2) Act 2005 Sch 10 para 11; and amended by the Finance Act 2007 s 72(12)). This provision does not apply in relation to the grant of a lease: Finance Act 2003 Sch 16 para 3(2). Instead, where a lease is granted to a person as bare trustee, he is treated for the purposes of the stamp duty land tax provisions (as they apply in relation to the grant of a lease) as

purchaser of the whole of the interest acquired; and where a lease is granted by a person as bare trustee, he is treated for the purposes of those provisions, as they so apply, as vendor of the whole of the interest disposed of: Sch 16 para 3(3), (4).

3 Ibid Sch 16 para 1(2). The references to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee, to resort to the property for payment of duty, taxes, costs or other outgoings or to direct how the property is to be dealt with: Sch 16 para 1(3).

Where property is held in trust under the law of Scotland, or of a country or territory outside the United Kingdom, on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property, that beneficiary is treated for the purposes of the stamp duty land tax provisions as having such an interest, notwithstanding that no such interest is recognised by the law of Scotland or, as the case may be, that country or territory; and an acquisition of the interest of a beneficiary under the trust is accordingly treated as involving the acquisition of an interest in the trust property: Sch 16 para 2.

4 Ibid Sch 16 para 4 (amended by 2007 Act s 72(12)). 'Settlement' means a trust that is not a bare trust: Sch 16 para 1(1). For the meaning of 'acquisition', see PARA 1117A.2.

5 Ie an assessment under ibid Sch 10 para 29: see PARA 1117A.28.

6 Ibid Sch 16 para 5(1). The responsible trustees, in relation to a land transaction, are the persons who are trustees at the effective date of the transaction and any person who subsequently becomes a trustee, but no amount may be recovered in respect of a penalty or interest thereon from a person who did not become a responsible trustee until after the relevant time: Sch 16 para 5(2), (3). For the meaning of 'relevant time', see PARA 1117A.38 NOTE 6.

7 Ibid Sch 16 para 6(1) (Sch 16 para 6 amended by Finance Act 2008 Sch 30 para 13). Provisions similar to those set out in PARA 1117A.37 heads (b)-(e) in relation to joint purchasers apply in such a case, with the substitution for 'purchasers' of 'relevant trustees': Finance Act 2003 Sch 16 para 6. However, in relation to the giving of a closure notice to the relevant trustees (see PARA 1117A.37 head (c)), it is specifically provided that such a notice is not invalidated if it is given to each of the relevant trustees whose identity is known to the Inland Revenue: Sch 16 para 6(3).

8 Ibid Sch 16 para 7.

9 Ibid Sch 16 para 8 (added by Finance Act 2006 s 165).

### 40. General powers to make regulations

The Treasury may, if it considers it expedient in the public interest, make provision by regulations for the variation of the stamp duty land tax provisions[1] in their application to land transactions of any description[2]. The power to make such regulations includes, in particular, power to alter the descriptions of land transaction that are chargeable or notifiable[3], or in respect of which tax is chargeable at any existing rate or amount[4]. Such regulations do not apply in relation to any transaction of which the effective date is after the end of the period of 18 months beginning with the day on which they were made, or such shorter period as may be specified therein[5].

The Treasury may by regulations make such amendments and repeals as appear to it to be appropriate in consequence of the stamp duty land tax provisions; and such regulations may, in particular, make such provision as the Treasury thinks fit for reproducing in relation to stamp duty land tax the effect of enactments providing for exemption from stamp duty[6].

The Treasury may also by regulations make such other amendments or repeals of enactments relating to stamp duty or stamp duty reserve tax as appear to it appropriate in consequence of the abolition of stamp duty except on instruments relating to stock or marketable securities[7].

The Commissioners for Her Majesty's Revenue and Customs may make regulations conferring administrative functions on the Chief Land Registrar[8] in connection with stamp duty land tax, and may make payments to land registrars in respect of the exercise of those functions[9].

1 Ie the Finance Act 2003 ss 42-124: see PARA 1117A.1 et seq.

2 Ibid s 109(1). An instrument containing such regulations must be laid before the House of Commons after being made, and if they are not approved by that House before the end of the period of 28 days beginning with the day on which they are made, they cease to have effect at the end of that period. However, if on any day during that period the House of Commons, in proceedings on a motion that (or to the effect that) the regulations be approved, comes to a decision rejecting the regulations, they cease to have effect at the end of that day: ss 109(4), 110(1)-(3). In reckoning any such period of 28 days, no account is taken of any time during which Parliament is prorogued or dissolved, or the House of Commons is adjourned for more than four days: s 110(4). Where regulations cease to have effect under this provision, that cessation is without prejudice to anything done in reliance thereon; but any amount paid by way of tax, interest or penalty, that would not have been payable but for the regulations must, on a claim, be repaid by the Inland Revenue but a claim may be made to the Inland Revenue for repayment of any tax, interest or penalty that would not have been payable but for the regulations: ss 110(5), 111(1) (s 111(1) amended by the Finance Act 2004 s 299(5)). A claim for repayment must be made within two years after the effective date of the transaction in question; and the Inland Revenue may make provision by regulations for varying the time limit for making a claim and as to any other condition that must be met before repayment is made: Finance Act 2003 s 111(3), (4). As to the making of such regulations, see PARA 1117A.2 NOTE 5. The provisions relating to interest on tax repaid (s 89, see PARA 1117A.31) apply to a repayment under s 111: s 111(2).

3 As to transactions which are chargeable and notifiable, see PARA 1117A.25.

4 Finance Act 2003 s 109(2). This power does not otherwise include power to vary any threshold, rate or amount specified in s 55 (see PARA 1117A.11) or Sch 5 (see PARA 1117A.12): s 109(3).

5 Ibid s 109(5). For the meaning of 'effective date', see PARA 1117A.3 NOTE 5. This does not affect the power to make further provision by regulations under s 109 to the same or similar effect: s 109(5). Such regulations may include such supplementary, transitional and incidental provision as appears to the Treasury to be necessary or expedient: s 109(6).

6 Ibid s 125(2), (3). As to the making of such regulations, see PARA 1117A.2 NOTE 5. See Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867; Stamp Duty and Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2868.

7 Finance Act 2003 s 125, Sch 20 para 7(1). The regulations may include such transitional provisions and savings as appear to the Treasury to be appropriate: Sch 20 para 7(2). Such regulations must be made by statutory instrument which is subject to annulment in pursuance of a resolution of the House of Commons: Sch 20 para 7(3).

8 Also, on such other persons with functions relating to the registration of land as regulations may specify: Finance (No 2) Act 2005 s 47(6).

9 Ibid s 47(5). Such regulations must be made by statutory instrument and are subject to annulment in pursuance of a resolution of the House of Commons: s 47(7).

### 41. Claims not included in returns

A claim which is not required to be made in, or by amendment to, a return under the stamp duty land tax provisions must be made in such form as the Inland Revenue may determine[1]. The form must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief; and may require:

337 (1) a statement of the amount of tax that will be required to be discharged or repaid in order to give effect to the claim;
338 (2) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct;
339 (3) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the aforementioned purpose[2].

A person who wishes to make a claim must keep such records as may be needed to enable him to make a correct and complete claim, and preserve those records until whichever is the latest of:

340 (a) the end of the period of 12 months beginning with the day on which the claim was made;
341 (b) where there is an inquiry into the claim, or into an amendment of the claim, the time when the inquiry is completed; and
342 (c) where the claim is amended and there is no inquiry into the amendment, the time when the Inland Revenue no longer has power to inquire into the amendment[3].

A person who fails to comply with heads (a) to (c) above in relation to a claim that he makes is liable to a penalty not exceeding £3,000[4].

The claimant may amend his claim by notice to the Inland Revenue, but no amendment may be made more than 12 months after the day on which the claim was made, or if the Inland Revenue give notice of inquiry, during the period beginning with the day on which such notice is given and ending with the day on which the inquiry is completed[5]. The Inland Revenue may, by notice to the claimant, amend a claim so as to correct obvious errors or omissions therein (whether errors of principle, arithmetical mistakes or otherwise), but no such correction may be made more than nine months after the day on which the claim was made or, if the Inland Revenue give notice of inquiry, during the period beginning with the day on which such notice is given and ending with the day on which the inquiry is completed[6].

The Inland Revenue may inquire into a person's claim or amendment thereof if they give him notice of their intention to do so ('notice of inquiry') before the end of the period of nine months after the day on which the claim or amendment was made[7]. If a notice of inquiry is so given, the Inland Revenue may by notice[8] in writing require the person concerned to produce to them such documents in his possession or power, and to provide them with such information, in such form, as they may reasonably require for the purposes of the inquiry[9]. An appeal may be brought, by notice in writing given, within 30 days after the issue of the disputed notice, to the officer of the Board who issued that notice, against such a requirement to produce documents or provide information[10]. A person who fails to comply with such a requirement is liable to a penalty of £50 and, if the failure continues after such a penalty is imposed, to a further penalty or penalties not exceeding £30 for each day on which the failure continues[11].

Such an inquiry is completed when the Inland Revenue by notice (a 'closure notice')[12] inform the purchaser that they have completed their inquiries and state their conclusions[13]. Within 30 days after the date of issue of a closure notice:

343 (i) the Inland Revenue must give effect to any amendment thereby made by making such adjustment as may be necessary, whether by way of assessment on the claimant, or by discharge or repayment of tax, and such an assessment is not out of time if it is made within the 30-day time limit;
344 (ii) an appeal may be lodged against a conclusion stated or amendment made by a closure notice, by notice in writing, specifying the grounds of appeal, given to the officer of the Board by whom the closure notice was given[14].

1 Finance Act 2003 s 82A, Sch 11A paras 1, 2(1) (s 82A, Sch 11A added by Finance Act 2004 s 299(2); Finance Act 2003 Sch 11A added by Finance Act 2004 s 299(3), Sch 40). As to returns, see PARA 1117A.25. For the meaning of 'Inland Revenue', see PARA 1117A. 3 NOTE 4. The stamp duty land tax provisions are contained in the Finance Act 2003 ss 42-124. Functions under Sch 11A para 2(1) and functions relating to a claim made to the Board under Sch 11A are functions of the Board: s 113(3A) (added by Finance Act 2004 s 299(6)). As to the Board, see PARA 1117A.1.

2 Finance Act 2003 Sch 11A para 2(2), (3).

3 Ibid Sch 11A para 3(1), (2). A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid: Sch 11A para 2(4). The duty to preserve records may be

satisfied by the preservation of the information therein contained, and where information is so preserved, a copy of any document forming part of the records is admissible in evidence in any proceedings before the tribunal to the same extent as the records themselves: Sch 11A para 3(3), (4) (Sch 11A para 3(4) amended by SI 2009/56). As from a day to be appointed, the Finance Act 2003 Sch 11A para 3 is amended: Finance Act 2009 Sch 50 para 12.

4 Finance Act 2003 Sch 11A para 3(5). However, no penalty is incurred if the Inland Revenue is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to it: Sch 11A para 3(6).

5 Ibid Sch 11A para 4. See also NOTE 6.

6 Ibid Sch 11A para 5(1), (2). Such a correction is, however, of no effect if, within three months from the date of issue of the notice of correction, the claimant gives notice (to the officer of the Board by whom the notice of correction was given) rejecting the correction: Sch 11A para 5(3), (4). As soon as practicable after a claim is made, amended or corrected, the Inland Revenue must give effect to it by discharge or repayment of tax: Sch 11A para 6(1). Where an inquiry into the claim or amendment takes place, this provision does not apply until a closure notice is given, and is subject to Sch 11A para 13; but the Inland Revenue may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as it thinks fit: Sch 11A para 6(2), (3).

7 Ibid Sch 11A para 7(1). A claim or amendment which has been the subject of one notice of inquiry may not be the subject of another: Sch 11A para 7(2).

8 Such notice may be given at the same time as the notice of inquiry, and must specify the time (not less than 30 days) within which the recipient is to comply therewith: ibid Sch 11A para 8(2). In complying with such a notice, copies of documents may be produced instead of originals, but the copies must be photographic or other facsimiles, and the Inland Revenue may by further notice require the originals to be produced for inspection: Sch 11A para 8(3). Such further notice must specify the time (not less than 30 days) within which the person is to comply therewith: Sch 11A para 8(3).

9 Ibid Sch 11A para 8(1). The Inland Revenue may take copies of, or make extracts from, any documents produced to it under these provisions, but a notice under Sch 11A para 8 does not oblige a person to produce documents or provide information relating to the conduct of any pending appeal by him: Sch 11A para 8(5).

10 Ibid Sch 11A para 9(1), (2). Such an appeal is determined in the same way as an appeal against an assessment (see PARA 1117A.29); and the tribunal hearing the appeal must set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them reasonably required for the purposes of the inquiry; and must otherwise confirm it: Sch 11A para 9(3), (4) (amended by SI 2009/56). If and in so far as it is so confirmed, the notice has effect as if the period specified therein for complying was 30 days from the determination of the appeal: Finance Act 2003 Sch 11A para 9(5) (amended by SI 2009/56). Notwithstanding the provisions of the Tribunals, Courts and Enforcement Act 2007 ss 11 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7), 13 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.8), the tribunal's decision is final: Finance Act 2003 Sch 11A para 9(6) (substituted by SI 2009/56).

11 Finance Act 2003 Sch 11A para 10(1). No penalty may be imposed under this provision in respect of a failure at any time after that failure has been remedied: Sch 11A para 10(2).

12 A closure notice must either (1) state that in the opinion of the Inland Revenue no amendment of the claim is required, or (2) if in the Inland Revenue's opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess (but in the case of an inquiry into the amendment of a claim, head (2) applies only so far as the deficiency or excess is attributable to the amendment): ibid Sch 11A para 11 (2). A closure notice takes effect when it is issued: Sch 11A para 11(3).

13 Ibid Sch 11A para 11(1). The claimant may apply to the tribunal for a direction that the Inland Revenue give a closure notice within a specified period, and any such application is subject to the relevant provision of the Taxes Management Act 1970 Pt V (ss 44-58) (see INCOME TAXATION): Finance Act 2003 Sch 11A para 12(1), (2) (Sch 11A para 12(1) amended, Sch 11A para 12(2) substituted, by SI 2009/56). The tribunal must give a direction unless it is satisfied that the Inland Revenue has reasonable grounds for not giving a closure notice within a specified period: Finance Act 2003 Sch 11A para 12(3) (amended by SI 2009/56).

14 Finance Act 2003 Sch 11A paras 13, 14(1)-(3). If the appeal relates to an amendment made by the closure notice, the tribunal may vary the amendment concerned, whether or not the variation is to the advantage of the appellant: Sch 11A para 14(6) (amended by SI 2009/56). The Finance Act 2003 Sch 11A para 13 applies (with the necessary modifications) in relation to any such variation as it applied in relation to the amendment: Sch 11A para 14(7) (amended by SI 2009/56). The Finance Act 2003 Sch 10 paras 36A-37 and 44 (see PARA 1117A.29) apply in relation to such an appeal as they apply in relation to an appeal under Sch 10 para 35 (see PARA 1117A.29: Sch 11A para 14(5) (amended by SI 2009/56).

## 42. Anti-avoidance

Where (1) one person (V) disposes of a chargeable interest[1] and another person (P) acquires either it or a chargeable interest derived from it; (2) a number of transactions (including the disposal and acquisition) are involved in connection with the disposal and acquisition (the 'scheme transactions')[2]; and (3) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition of V's chargeable interest by P on its disposal by V, then any of the scheme transactions which is a land transaction is disregarded, and instead there is a notional land transaction effecting the acquisition of V's chargeable interest by P on its disposal by V[3].

The chargeable consideration on the notional transaction is the largest amount (or aggregate amount) given by or on behalf of any one person by way of consideration for the scheme transactions, or received by or on behalf of V (or a person connected with him) by way of consideration for the scheme transactions[4]. In calculating the chargeable consideration, consideration for a transaction is ignored if or insofar as the transaction is merely incidental to the transfer of the chargeable interest from V to P[5]. The effective date of the notional transaction is the last date of completion for the scheme transactions or, if it is earlier, the last date on which a contract in respect of the scheme transactions is effectively performed[6].

The Treasury may by order provide for the above provisions not to apply in specified circumstances[7].

1 For the meaning of 'chargeable interest' see PARA 1117A.2. For this purpose, an interest in a property investment partnership is a chargeable interest insofar as it concerns land owned by the partnership; and where V or P is a partnership, the Finance Act 2003 Sch 15 Pt 3 (paras 9-40) (see PARA 1117A.38) applies to the notional transaction as to the transfer of a chargeable interest to or from a partnership: s 75C(8) (ss 75A-75C added by Finance Act 2007 s 71). For the meaning of 'property investment partnership' see PARA 1117A.38.

2 'Transaction' includes, in particular, (1) a non-land transaction; (2) an agreement, offer or undertaking not to take specified action; (3) any kind of arrangement whether or not it could otherwise be described as a transaction; and (4) a transaction which takes place after the acquisition by P of the chargeable interest: Finance Act 2003 s 75A(2). The scheme transactions may include, for example (a) the acquisition by P of a lease derived from a freehold owned or formerly owned by V; (b) a sub-sale to a third person; (c) the grant of a lease to a third person subject to a right to terminate; (d) the exercise of (or an agreement not to exercise) a right to terminate a lease or to take some other action; (e) the variation of a right to terminate a lease or to take some other action: s 75A(3). A transfer of shares or securities is ignored for the purposes of s 75A if it would otherwise be the first of a series of scheme transactions: s 75C(1).

3 Ibid s 75A(1), (4). This provision does not apply where head (3) of the TEXT is satisfied only by reason of ss 71A-73 (see PARAS 1117A.24, 1117A.25) or a provision of Sch 9 (see PARA 1117A.24): s 75A(7) (s 75A as added). The notional transaction attracts any relief which it would attract were it an actual transaction (subject to the terms and restrictions of that relief); and is a land transaction entered into for the purpose of or in connection with the transfer of an undertaking or part for the purposes of Sch 7 paras 7, 8 (see PARA 1117A.18) if any of the scheme transactions is entered into for those purposes or in that connection: s 75C(2), (3). The Finance Act 2003 s 53 (see PARA 1117A.10) and Sch 4 para 5 (see PARA 1117A.7) apply to the notional transaction: s 75C(6), (7).

Stamp duty land tax paid in respect of a land transaction which is disregarded under this provision is taken to have been paid in respect of the notional transaction: s 75C(10). For the meaning of 'land transaction' see PARA 1117A.1.

4 Ibid s 75A(5). For the meaning of 'connected person') see the Income and Corporation Taxes Act 1988 s 839; and INCOME TAXATION (definition applied by Finance Act 2003 s 75A(5)). In the application of s 75A(5) no account is to be taken of any amount paid by way of consideration in respect of a transaction to which any of s 60 or 61 (see PARA 1117A.16), s 63 or 64 (see PARA 1117A.19), s 65 (see PARA 1117A.20), s 66 or 67 (see PARA 1117A.21), s 69 (see PARA 1117A.22), s 71 or 74 (see PARA 1117A.24) or a provision of Sch 6A (see PARA 1117A.15) or Sch 8 (see PARA 1117A.23) applies: s 75C(4). Also in the application of s 75A(5), an amount given or received partly in respect of the chargeable interest acquired by P and partly in respect of another chargeable interest is apportioned as may be just and reasonable: s 75C(5).

Any reference in s 75A to an amount of consideration includes a reference to the value of consideration given as money's worth: s 75C(9).

5 Ibid s 75B(1). A transaction is not incidental to the transfer of the chargeable interest from V to P (1) if or in so far as it forms part of a process, or series of transactions, by which the transfer is effected; (2) if the transfer of the chargeable interest is conditional on the completion of the transaction; or (3) it is of a kind specified in note 2, heads (a)-(e): s 75B(2). Subject to heads (1)-(3), a transaction may, in particular, be incidental if or insofar as it is undertaken only for a purpose relating to: (a) the construction of a building on property to which the chargeable interest relates; (b) the sale or supply of anything other than land; or (c) a loan to P secured by a mortgage, or any other provision of finance to enable P, or another person, to pay for part of a process, or series of transactions, by which the chargeable interest is transferred from V to P: s 75B(3), (4). Any consideration which is to be excluded under these provisions may be apportioned if necessary as may be just and reasonable: s 75B(5). For this purpose, any reference to the transfer of a chargeable interest from V to P includes a reference to a disposal by B of an interest acquired by P: s 75B(6).

6 Ibid s 75A(6).

7 Ibid s 75C(11). Such an order may include incidental, consequential or transitional provision and may make provision with retrospective effect: s 75C(12).

## UPDATE

### 1001-1117 Stamp Duties

Stamp duty is chargeable under the Finance Act 1999 Sch 13 only on instruments relating to stock or marketable securities; and the Finance Act 1895 s 12 does not apply to property other than stock or marketable securities: Finance Act 2003 s 125 (amended by the Finance Act 2004 Sch 39 para 23, Sch 41 para 2(b)). The Finance Act 2003 s 125 is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3). Land transactions are now subject to stamp duty land tax: see PARA 1117A. However, nothing in s 125 or in Sch 20 Pt 2 (paras 1, 2) affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected; and in Sch 20 Pt 1, references to stock or marketable securities are to be read as including any property that is the subject matter of a transaction by which an interest in a partnership is transferred: Sch 15 para 31(1), (2) (Sch 15 paras 9-40 substituted by Finance Act 2004 Sch 41 para 1).

In their application to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect with the following modification.

391 (1) Where stamp duty under the Finance Act 1999 Sch 13 Pt I (paras 1-9) is chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes a chargeable interest, the 'relevant partnership property', in relation to the transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer; and the consideration for the transaction is taken to be equal to the actual consideration for the transaction less the excluded amount: Finance Act 2003 Sch 15 paras 31(3), 32(1)-(3).

392 (2) Where stamp duty under the Finance Act 1999 Sch 13 Pt I is otherwise chargeable on an instrument effecting a transfer of an interest in a partnership, and the relevant partnership property includes no stock or marketable securities no such duty may be charged: Finance Act 2003 Sch 15 paras 31(3), 33(1), (1A) (Sch 15 paras 33(1), (1A) substituted by Finance (No 2) Act 2005 Sch 10 para 21(2)). The 'relevant partnership property', in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any

partnership property that was transferred to the partnership in connection with the transfer: Finance Act 2003 Sch 15 paras 31(3), 33(3A) (Sch 15 para 33(3A) added by Finance (No 2) Act 2005 Sch 10 para 21(4)). If the relevant partnership property includes stock or marketable securities, the stamp duty chargeable on the instrument must not exceed the stamp duty that would be chargeable if (a) the instrument were an instrument effecting a transfer of that stock and those securities, and (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer: Sch 15 para 33(3) (amended by Finance (No 2) Act 2005 Sch 10 para 21(3)). The appropriate proportion is a proportion of the net market value of the relevant partnership property immediately after the transfer; and that proportion is (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer, and (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer: Finance Act 2003 Sch 15 para 33(5) (amended by Finance (No 2) Act 2005 Sch 10 para 21(5), (6)). The net market value of a chargeable interest at a particular date is

$$MV - SL$$

393 where MV is the market value of the chargeable interest at that date, and SL is the amount outstanding at that date on any loan secured solely on the chargeable interest; however, if SL is greater than MV, the net market value of the chargeable interest is taken to be nil: Finance Act 2003 Sch 15 para 33(6), (7).

Where Sch 15 para 33 applies in relation to an instrument, the instrument is not regarded as duly stamped unless it has been stamped in accordance with the Stamp Act 1891 s 12: Finance Act 2003 Sch 15 para, 33(8). Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business; and any reference to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profit of the partnership: Sch 15 para 34(1), (2).

The amendments made by the Finance Act 2008 Sch 32 paras 1-3 (see PARA 1095), 10 (see PARAS 1027, 1077-1079, 1081), 12 (see PARA 1093) and 18, and associated repeals, do not have effect in relation to an instrument effecting a land transaction or a duplicate or counterpart of such an instrument; and 'land transaction' has the meaning given by the Finance Act 2003 s 49 (see PARA 1117A.1): Finance Act 2008 Sch 32 para 22.

# 2. STAMP DUTY RESERVE TAX

## (1) INTRODUCTION

### 1118. In general.

Stamp duty reserve tax[1] is charged in respect of agreements to transfer[2] certain securities[3] for money or money's worth and in respect of arrangements involving depositary receipts and clearance services. The principal charge in respect of agreements is deferred and will not arise if certain conditions are satisfied[4]; but there is also an immediate and unconditional charge in respect of agreements to transfer chargeable securities which are constituted by or transferable by means of certain renounceable instruments as soon as they are made, without regard to whether or not the agreement is implemented by an instrument of transfer[5]. In each case, tax is imposed at the rate of 50 pence for every £100 or part of £100 of the amount or value of the consideration[6]. A higher rate charge of £1.50 per £100 or part of £100 of the amount or value of the consideration is imposed in respect of certain transactions involving depositary receipts or clearance services which do not give rise to a transfer chargeable with ad valorem stamp duty in the same amount as the tax[7].

The rates for stamp duty reserve tax are therefore the same as those for stamp duty[8], but the tax base in relation to securities is broader as stamp duty reserve tax applies to transactions which are not effected by means of an instrument of transfer and the tax is imposed irrespective of the nature of the consideration[9]. Liability for stamp duty reserve tax is imposed on the purchaser[10], but the tax is usually collected and paid by intermediaries in the securities market[11].

As with stamp duty, the tax is under the care and management of the Commissioners of Inland Revenue[12] and is administered by the Stamp Office. Unlike stamp duty, the tax is directly enforceable and may be recovered by the commissioners[13], and appeals are heard in the first instance by the Special Commissioners, rather than upon a case stated to the High Court[14].

1 Stamp duty reserve tax was introduced by the Finance Act 1986 Pt IV (ss 86-99) (as amended) (see PARA 1120 et seq post): see s 86(1). As to the prospective abolition of the tax see PARA 1119 post.

2 As to the distinction between a 'transfer' and an 'issue' of securities see PARA 1120 note 2 post.

3 As to the securities which attract a charge see PARA 1124 post.

4 For convenience, this charge is referred to as 'the potential charge': see PARA 1120 post.

5 See PARA 1121 post.

6 See PARAS 1120-1121 post.

7 See PARAS 1122-1123 post.

8 See PARAS 1029 (transfer on sale of stock and marketable securities), 1065 et seq (bearer instruments, depositary receipts and clearance services) ante. As to the prospective abolition of the charge to stamp duty on bearer instruments, and on the transfer or vesting of defined securities, see PARAS 1004-1005 ante. As to stamp duty generally see PARA 1001 et seq ante.

9 Cf paras 1010, 1031 ante.

10 Finance Act 1986 s 91(1).

11 See PARA 1132 post.

12 Finance Act 1986 ss 86(2), 99(2). The Provisional Collection of Taxes Act 1968 applies to stamp duty reserve tax (Finance Act 1986 s 86(3)), although it does not apply to stamp duty (see PARA 1010 note 2 ante). The Inland Revenue Regulation Act 1890 also applies, with the exceptions of ss 21, 22, 35 (as amended) (proceedings for fines, etc): Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 21. Regulation 20, Schedule (as amended) modify and apply certain provisions of the Taxes Management Act 1970 which relate to the collection and enforcement of tax to stamp duty reserve tax: see PARAS 1132, 1138, 1140 post. As to accountability for, and notification and payment of, a charge to stamp duty reserve tax see PARAS 1132-1133 post; and as to notice of determination see PARA 1135 post. The Finance Act 1986 ss 86, 99(2) are prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day; and the Stamp Duty Reserve Tax Regulations 1986 (as amended) will accordingly be revoked with effect from that day. For the meaning of 'the abolition day' see PARA 1119 note 3 post. At the date at which this volume states the law, no such day had been appointed.

13 See PARA 1140 post.

14 See PARA 1142 post.

### UPDATE

### 1118 In general

TEXT AND NOTES--In relation to transactions on or after 1 July 1996 (or earlier agreements subject to a condition which is fulfilled after that date), stamp duty reserve tax is chargeable whether the agreement, transfer, issue or appropriation in question is made or effected in the United Kingdom or elsewhere, and whether or not any party is resident or situate in any part of the United Kingdom: Finance Act 1986 s 86(4) (added by the Finance Act 1996 s 187).

NOTE 12--Inland Revenue Regulation Act 1890 repealed: Commissioners for Revenue and Customs Act 2005 Sch 4 para 5, Sch 5.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(1) INTRODUCTION/1119. Prospective abolition of stamp duty reserve tax.

**1119. Prospective abolition of stamp duty reserve tax.**

Stamp duty reserve tax will cease to be chargeable in accordance with the following provisions[1].

In relation to the charge to tax:

345 (1) in respect of agreements to transfer chargeable securities between A and B[2], the tax will not be chargeable where (a) the agreement to transfer is conditional and the condition is satisfied on or after the abolition day[3]; or (b) the agreement is not conditional and is made on or after that day[4];
346 (2) under the provisions relating to depositary receipts[5], the tax will not be chargeable where securities are transferred, issued or appropriated on or after the abolition day, whenever the arrangement was made[6];
347 (3) relating to depositary receipts where chargeable securities are issued or transferred on sale under terms providing for payment in instalments and for an issue of other chargeable securities[7] and which becomes due when an instalment is payable, the tax will not be chargeable where securities are issued or transferred on sale under such terms on or after the abolition day[8];
348 (4) under the provisions relating to clearance services[9], the tax will not be chargeable where securities are transferred or issued on or after the abolition day, whenever the arrangement was made[10]; and
349 (5) relating to clearance services where chargeable securities are issued or transferred on sale under terms providing for payment in instalments and for an issue of other chargeable securities[11] and which becomes due when an instalment is payable, the tax will not be chargeable where securities are issued or transferred on sale under such terms on or after the abolition day[12].

These provisions have not, however, been brought into force[13].

1 Finance Act 1990 s 110(1).

2 Ie the charge to tax under the Finance Act 1986 s 87 (as amended): see PARAS 1120-1121 post.

3 Finance Act 1990 s 110(2)(a). 'The abolition day' means such day as may be appointed by the Treasury by order made by statutory instrument: s 111(1). At the date at which this volume states the law, no such order had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Ibid s 110(2)(b).

5 Ie the charge to tax under the Finance Act 1986 s 93(1): see PARA 1122 post.

6 Finance Act 1990 s 110(3).

7 Ie the charge to tax under the Finance Act 1986 s 93(10): see PARA 1122 post.

8 Finance Act 1990 s 110(5). Where before the abolition day securities are issued or transferred on sale under terms mentioned in the Finance Act 1986 s 93(10), in construing s 93(10) the effect of the Finance Act 1990 s 110(1), (3) is to be ignored: s 110(7).

9 Ie the charge to tax under the Finance Act 1986 s 96(1): see PARA 1123 post.

10 Finance Act 1990 s 110(4).

11 Ie the charge to tax under the Finance Act 1986 s 96(8): see PARA 1123 post.

12 Finance Act 1990 s 110(6). Where before the abolition day securities are issued or transferred on sale under terms mentioned in the Finance Act 1986 s 96(8), in construing s 96(8) the effect of the Finance Act 1990 s 110(1), (4) is to be ignored: s 110(8).

13 See note 3 supra.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(2) THE CHARGE TO TAX/(i) Agreements to Transfer Chargeable Securities/1120. The potential charge on agreements.

## (2) THE CHARGE TO TAX

## (i) Agreements to Transfer Chargeable Securities

### 1120. The potential charge on agreements.

Subject to certain exceptions[1] where a person ('A') agrees with another person ('B') to transfer[2] chargeable securities[3] (whether or not to B) for consideration in money or money's worth[4], there is a charge to stamp duty reserve tax on the expiry of the period of two months beginning with the relevant day[5], unless the agreement is to transfer the securities to B or his nominee and the following two conditions have been fulfilled by the time that period expires[6]. The first condition is that an instrument is (or instruments are) executed in pursuance of the agreement and the instrument transfers (or the instruments between them transfer) to B or, as the case may be, to his nominee all the chargeable securities to which the agreement relates[7]. The second condition is that the instrument (or each instrument) transferring the chargeable securities to which the agreement relates is duly stamped in accordance with the enactments relating to stamp duty[8] if it is an instrument which, under those enactments, is chargeable with stamp duty or otherwise required to be stamped[9].

Provision is made for repayment or cancellation of the charge in the event that these conditions are fulfilled within six years[10]. Where there would be no charge to tax in relation to some of the chargeable securities to which the agreement between A and B relates if separate agreements had been made between them for the transfer of those securities and for the transfer of the remainder, these provisions have effect as if such separate agreements had been made[11]. They also have effect in relation to a person to whom the chargeable securities are transferred by way of security for a loan to B as they have effect in relation to a nominee of B[12].

There is an immediate charge to stamp duty reserve tax in respect of agreements to transfer chargeable securities which are constituted by or transferable by means of certain renounceable instruments, to which the conditions for relief of the charge do not apply[13].

Tax under these provisions is charged at the rate of 50 pence for every £100 or part of £100 of the amount or value of the consideration for the agreement to transfer the chargeable securities[14]. B is liable for the tax[15] which is usually collected and paid by intermediaries in the securities market[16].

1 See PARAS 1125-1128 post.

2 As to the difference between the transfer of securities and the issue of securities see *Re VGM Holdings* [1942] Ch 235 at 240-441. Stamp duty reserve tax is not chargeable if the agreement in question relates to newly subscribed securities other than units under a unit trust scheme and certain statutory conditions are fulfilled: see the Finance Act 1986 s 89A(2) (added by the Finance (No 2) Act 1987 s 100(1)); and PARA 1126 post. For instances of issues on which stamp duty reserve tax is chargeable see the Finance Act 1986 ss 93(1)(b), 96(1)(b); and see PARAS 1122-1123 post. Except in s 99(6A), (6B) (as added) (see PARA 1124 post), 'unit' and 'unit trust scheme' have the same meanings as in the Finance Act 1946 Pt VII (ss 52-57) (as amended) (see PARA 1029 note 4 ante): Finance Act 1986 s 99(9) (amended by the Finance Act 1988 s 144(1), (3); and by the Finance Act 1990 s 113(1), (4)). As to the application of the amendment made by s 113(1), (4) see further PARA 1124 note 3 post. The Finance Act 1986 s 89A (as so added), s 99 (as amended) are prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

3 For the meaning of 'chargeable securities' see PARA 1124 post.

4 Finance Act 1986 s 87(1).

5 'The relevant day' means (1) in a case where the agreement is conditional, the day on which the condition is satisfied; and (2) in any other case, the day on which the agreement is made: ibid s 87(3).

6 Ibid s 87(2).

7 Ibid s 87(4).

An instrument on which stamp duty is not chargeable by virtue of the Finance Act 1976 s 127(1) (as amended) (transfer to stock exchange nominee: see PARA 1104 ante) or the Finance Act 1986 s 84(2) or (3) (see PARA 1104 ante) is to be disregarded in construing s 87(4), (5): s 88(1). Accordingly, the execution of such an instrument will not relieve the charge. See also the Finance Act 1989 ss 175-176 (stamp duty and stamp duty reserve tax: stock exchange nominees); and PARAS 1103 ante, 1129 post. A stock exchange nominee is also exempted from the higher rate charge which applies to clearance services: see note 13 infra; and PARA 1131 post.

In the circumstances prescribed in s 88(2) (see PARA 1121 post) s 87(4), (5), (8) is omitted: s 88(3)(b).

8 'The enactments relating to stamp duty' means the Stamp Act 1891 and any enactment which amends or is required to be construed together with that Act (see PARA 1009 note 1 ante): Finance Act 1986 s 87(8). See also note 7 supra.

9 Ibid s 87(5). See also note 7 supra.

10 See ibid s 92 (as amended); and PARA 1137 post.

11 Ibid s 87(7A) (added by the Finance Act 1987 s 56, Sch 7 para 2).

12 Finance Act 1986 s 87(7B) (added by the Finance Act 1987 Sch 7 para 2).

13 See the Finance Act 1986 s 88(2), (3) (as amended); and PARA 1121 post. The conditions for relief of the charge also do not apply to a transfer to a stock exchange nominee (see note 7 supra); for applicable exemptions in such a case see PARA 1125 post.

14 Ibid s 87(6). For the purposes of s 87(6) the value of any consideration not consisting of money is taken to be the price it might reasonably be expected to fetch on a sale in the open market at the time the agreement mentioned in s 87(1) is made: s 87(7). Section 87 (as amended) applies where the agreement to transfer is made on or after the day on which the rule of the Stock Exchange that prohibited a person from carrying on business as both a broker and a jobber was abolished (ie 27 October 1986), and has effect subject to ss 88-90 (as amended): s 87(9), (10); and see PARAS 1121, 1125-1128 post. Section 87 (as amended) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VII as from the abolition day.

15 Finance Act 1986 s 91(1). Section 91 (as amended) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VII as from the abolition day.

16 See PARA 1132 post.

### UPDATE

### 1120 The potential charge on agreements

TEXT AND NOTES--The Finance Act 1986 s 87 does not apply to (and consequently stamp duty reserve tax is not chargeable in respect of) mergers of authorised unit trusts, and directions to hold trust property on other trusts, which meet conditions similar to those set out in PARA 1074A: Finance Act 1997 ss 100, 101.

TEXT AND NOTES 1-7--The two-month period of grace is removed, and the Finance Act 1986 s 88(2), (3) is consequently repealed: Finance Act 1996 s 188(1), (5), Sch 41 Pt VII.

NOTE 2--The Finance Act 1988 s 144(3) and the Finance Act 1990 s 113(4) repealed: Finance Act 1999 Sch 20 Pt V(5). 'Unit trust scheme' does not include arrangements

falling within the Finance Act 2005 s 48A (see INCOME TAXATION): Finance Act 1986 s 99(9A) (added by Finance Act 2008 s 154).

TEXT AND NOTES 7-9--Finance Act 1986 s 87(4), (5) replaced in similar terms by s 92(1A), (1B), (6) (substituted by Finance Act 1996 s 192(6); 1986 Act s 92(1B) amended by SI 2003/2868. The second condition is now that the instrument (or each instrument) transferring the chargeable securities to which the agreement relates (1) so far as those securities are stock or marketable securities within the meaning of the Finance Act 2003 s 125, is duly stamped in accordance with the enactments relating to stamp duty, or is not chargeable to stamp duty or otherwise required to be stamped under those enactments; or (2) so far as those securities are not such stock or marketable securities, is an instrument that disregarding s 125, would not be chargeable with any ad valorem stamp duty under those enactments: Finance Act 1986 s 92(1B) (as so substituted and amended).

An instrument on which stamp duty is not chargeable by virtue of (1) the Finance Act 1999 Sch 13 Pt I (paras 1-9) (see PARA 1027 et seq); (2) Finance Act 1976 s 127(1) (see PARA 1104); or (3) under the Finance Act 1986 s 84(2) or (3) (see PARA 1104) is disregarded in construing s 92(1A), (1B). An instrument on which stamp duty is not chargeable by virtue of the Finance Act 1996 s 186 (see PARA 1029) is similarly disregarded unless the transfer is made by a stock exchange nominee and the maximum stamp duty otherwise chargeable on the instrument would be £5: Finance Act 1986 s 88(1) (amended by the Finance Act 1996 s 188; and the Finance Act 1999 Sch 14 para 20), Finance Act 1986(1A) (added by the Finance Act 1996 ss 189(1), 192(2); and amended by the Finance Act 1999 Sch 14 para 20). These amended provisions do not apply to transfers or other instruments relating to units under a unit trust scheme (see PARA 1121A): s 122. For the prospective repeal of Sch 14 para 20 from abolition day, see s 123(3) and PARAS 1004, 1005. 'Stock exchange nominee' means a person designated for the purposes of the Finance Act 1976 s 127 (see PARA 1104) as a nominee of The Stock Exchange by an order made by the Secretary of State under s 127(5): Finance Act 1986 s 88(1A) (added by the Finance Act 1996 ss 189(1), 192(2)).

An instrument on which stamp duty is not chargeable by virtue of the Finance Act 1930 s 42 (see PARA 1090), or equivalent Northern Ireland legislation, is disregarded in construing the Finance Act 1986 s 92(1A), (1B) in any case where the property mentioned in the Finance Act 1930 s 42(2)(a) consists of or includes chargeable securities (see PARA 1124) of any particular kind acquired in the period of two years ending with the day on which the instrument was executed; and the body corporate from which the relevant conveyance or transfer is effected acquired any of those chargeable securities (a) in a transaction which was given effect by an instrument of transfer on which stamp duty was not chargeable by virtue of the Finance Act 1986 s 80A (see PARA 1104), or (b) in pursuance of an agreement to transfer securities as regards which no charge to stamp duty reserve tax arose by virtue of s 88A (see PARA 1125), or (c) in pursuance of an agreement to transfer securities which was made for the purposes of performing the obligation to transfer chargeable securities described in s 89AA(1)(a) (see PARA 1125) and as regards which no charge to stamp duty reserve tax arose by virtue of s 89AA(2), or (d) in circumstances with regard to which the charge to stamp duty or stamp duty reserve tax was treated as not arising by virtue of regulations under the Finance Act 1991 s 116 or 117 (see PARA 1128): the Finance Act 1986 s 88(1B) (added by the Finance Act 1996 ss 190(1), (3), 192(2); and amended by the Finance Act 1997 ss 97(3), 102(3), 103(3), 106(5)). Where there is an arrangement falling within the Finance Act 1986 s 80C(1) (see PARA 1104), under which stock is transferred to A or his nominee by an instrument on which no stamp duty is chargeable by virtue only of s 80C(2), but it becomes apparent that stock of the same kind or amount will not be transferred by B or his nominee by A or his nominee in accordance

with the arrangement, the instrument is to be disregarded in construing s 92(1A), (1B); as is an instrument transferring stock in accordance with an arrangement, which is stamped under s 80C(5), but which should not have been so stamped because the arrangement fell within s 80C(4)(a) or (b), and apart from s 80C stamp duty would have been chargeable on the instrument: s 88(1C), (1D) (both added by the Finance Act 1997 s 103(4).

If the chargeable securities cannot otherwise be identified, those acquired later in the two-year period (and not previously taken into account under the Finance Act 1986 s 88(1B)) are to be taken before those acquired earlier in the period; and if, in the case of an agreement (or two or more agreements between the same parties) to transfer chargeable securities, the conditions in ss 92(1A) and (1B) are not satisfied by virtue only of the application of s 88(1B) in relation to the instrument (or any one or more of the two or more instruments in question), but not all of the chargeable securities falling to be regarded for the purposes of s 88(1B) as transferred by the instrument or instruments were acquired as mentioned in s 88(1B)(a), (b), stamp duty reserve tax is to be repaid or cancelled under s 92: s 88(4), (5) (added by the Finance Act 1997 s 106(6)). Where a person enters into an agreement for securities to be transferred to him or his nominee, the securities are treated for the purposes of these provisions as acquired by that person at the time when he enters into the agreement, unless the agreement is conditional, in which case they are taken to be acquired by him when the condition is satisfied: Finance Act 1986 s 88(6) (added by the Finance Act 1996 s 190(2), (3)).

Any repayment or cancellation of tax falling to be made by virtue of the Finance Act 1986 s 88(5) is to be determined as if (without prejudice to s 87(7A)) there had, instead of the agreement or agreements in question, been a separate agreement (or two or more separate agreements) relating to such of the securities as were acquired as mentioned in s 88(1B)(a), (b), and a single separate agreement relating to such of the securities as do not fall within those provisions: s 88(5A) (added by the Finance Act 1997 s 106(6)).

TEXT AND NOTES 11, 12--Finance Act 1986 s 87(7A) substituted, and s 87(7B) repealed: Finance Act 1997 s 106(2), (3), Sch 18 Pt VII. See now the Finance Act 1986 s 92(7) (inserted by the Finance Act 1997 s 106(8)).

Where there would be no charge to tax under the Finance Act 1986 s 87, or there would, under s 92 (see PARA 1137), be a repayment or cancellation of tax, in relation to some of the chargeable securities to which the agreement between A and B relates if separate agreements had been made between them for the transfer of those securities and for the transfer of the remainder ss 87, 88(5), 92 are to have effect as if such separate agreements had been made: s 87(7A) (as substituted).

TEXT AND NOTE 14--The charge is now at the rate of 0·5 per cent: Finance Act 1986 s 87(6) (amended by the Finance Act 1996 s 194(1), (7)).

**1121. The immediate charge on agreements; renounceable instruments.**

Subject to certain exceptions[1], where a person ('A') agrees with another person ('B') to transfer[2] (whether or not to B) chargeable securities[3] constituted by or transferable by means of a renounceable letter of allotment, letter of rights or other similar instrument, where the rights under the letter or instrument are renounceable not later than six months after the issue of that letter or instrument, for consideration in money or money's worth[4], there is a charge to stamp duty reserve tax on the relevant day[5].

Stamp duty reserve tax is charged at the rate of 50 pence for every £100 or part of £100 of the amount or value of the consideration[6]. B is liable for the tax[7], which is usually collected and paid by intermediaries in the securities market[8].

1 See PARAS 1125-1128 post.

2 As to the meaning of 'transfer' for these purposes see PARA 1120 note 2 ante.

3 For the meaning of 'chargeable securities' see PARA 1124 post.

4 Ie where the chargeable securities mentioned in the Finance Act 1986 s 87(1) (see PARA 1120 ante) are constituted by or transferable by means of an inland bearer instrument which is exempt from stamp duty by virtue of the Stamp Act 1891, s 1, Sch 1, 'Bearer Instrument' Exemption 3 (as added) (see PARA 1098 ante), or would be so exempt if it were otherwise chargeable under that heading: Finance Act 1986 s 88(2). For the meaning of 'inland bearer instrument' see PARA 1066 ante.

5 Ibid s 88(3)(a) (amended by the Finance Act 1987 s 56, Sch 7 para 3), modifying the Finance Act 1986 s 87(2) (see PARA 1120 ante). For the meaning of 'the relevant day' see PARA 1120 note 5 ante. Sections 87, 88 (as amended) are prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

6 Finance Act 1986 s 87(6).

7 Ibid s 91(1). Section 91 (as amended) is prospectively repealed by the Finance Act 1990 Sch 19 Pt VII as from the abolition day.

8 See PARA 1132 post.

**UPDATE**

**1121 The immediate charge on agreements; renounceable instruments**

TEXT AND NOTES 1-5--Finance Act 1986 s 88(2), (3) repealed: Finance Act 1996 s 188(3), (5), Sch 41 Pt VII.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(2) THE CHARGE TO TAX/(i) Agreements to Transfer Chargeable Securities/1121A. Dealings with units in unit trusts.

**1121A. Dealings with units in unit trusts.**

There is a charge to stamp duty reserve tax where (1) a person authorises or requires the trustees or managers under a unit trust scheme[1] to treat him as no longer interested in a unit under the scheme; or (2) a unit under such a scheme is transferred to its managers, and in each case that the unit is a chargeable security[2]. The tax is chargeable whether the surrender is made or effected in the United Kingdom or elsewhere, and whether or not any party is resident or situate in any part of the United Kingdom[3].

The charge is at the rate of 0·5 per cent of the market value of the unit and is levied on the trustees of the unit trust in question[4]. The amount of tax chargeable is proportionately reduced if the number of units of the same class as the unit in question that are surrendered to the managers in the relevant two-week period exceeds the number of units of that class issued[5] by the managers in that period[6].

Where in pursuance of arrangements between the person entitled to a unit and another person ('the new owner') the unit is surrendered to the managers and the person so surrendering authorises or requires the managers or trustees to treat the new owner as entitled to the unit, there is no charge to tax under these provisions if no consideration in money or money's worth is given in connection with the surrender or the new owner's becoming entitled to the unit[7]; nor is there a charge to tax under these provisions on the surrender of the unit if (a) immediately before the surrender, the unit is held within an individual pension account[8]; (b) not all the units under the unit trust scheme are so held at that time; and (c) a certificate[9] is contained in, or provided with, the relevant monthly tax return[10].

1 For the purposes of the enactments relating to stamp duty and the enactments relating to stamp duty reserve tax (see PARA 1074), and subject to regulations made by the Treasury, 'unit trust scheme' has the meaning given by the Financial Services and Markets Act 2000 s 237(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603), but does not include (1) a common investment scheme under the Charities Act 1960 s 22 or the Charities Act 1993 s 24 (or corresponding Northern Ireland legislation); (2) a common deposit scheme under the Charities Act 1960 s 22A or the Charities Act 1993 s 25; (3) a unit trust scheme the units in which are under the terms of the trust instrument required to be held only by bodies of persons established for charitable purposes only or trustees of trusts so established; or (4) common investment arrangements made by trustees of exempt approved schemes (within the meaning of the Income and Corporation Taxes Act 1988 s 592(1)) solely for the purposes of the schemes: Finance Act 1999 Sch 19 paras 14-17. Each of the parts of an umbrella scheme (ie a unit trust scheme which provides arrangements for separate pooling of the contributions of participants and of the profits or income out of which payments are to be made to them, and under which the participants are entitled to exchange rights in one pool for rights in another) is regarded as a unit trust scheme and the scheme as a whole is not so regarded: Sch 19 para 18(1), (2). A 'part' of an umbrella scheme is such of the arrangements as relate to a separate pool, and in such a case a reference to the trust property has effect as a reference to such of the trust property as under the arrangements forms part of the separate pool to which the part of the umbrella scheme relates, and any reference to a unit holder has effect as a reference to a person from the time being having rights in that separate pool: Sch 19 para 18(2), (3). In all other cases, 'unit' means a right or interest (whether described as a unit, as a sub-unit or otherwise) of a beneficiary under the trust instrument (ie the trust deed or other instrument (whether under seal or not) creating or recording the trusts on which the property in question is held); and 'unit holder' means a person entitled to a share of the trust property (ie the property subject to the trusts of the trust instrument): Sch 19 para 14.

2 Ibid Sch 19 para 2(1). Each is referred to as the 'surrender' of a unit to the managers: Sch 19 para 2(1). For the meaning of 'chargeable security', see PARA 1124. This charge ceases to have effect from abolition day (see PARAS 1004, 1005): s 123.

3 Ibid Sch 19 para 2(2). No charge, however, arises if on the surrender of the unit the unit holder receives only such part of each description of asset in the trust property as is proportionate to, or as nearly as practicable in proportion to, the unit holder's share: Sch 19 para 7.

4 Ibid Sch 19 paras 2(3), 3(1). The market value of the unit is the higher of (1) the price which the unit might reasonably be expected to fetch on a sale in the open market at the time of surrender, and (2) the cancellation price, or if it is redeemed its redemption price, at that time, calculated in accordance with the trust instrument: Sch 19 para 3(2).

5 'Issue' in the context of the issue of a unit by the managers under a unit trust scheme includes their transferring an existing unit or authorising or requiring the trustees to treat a person as entitled to a unit under the scheme; and references in these provisions to the surrender or issue of a unit under such a scheme do not include a surrender or issue effected by means of, or consisting of the issue of, a certificate to bearer: ibid Sch 19 para 8.

6 Ibid Sch 19 para 4(1). The 'relevant two-week period' in relation to a surrender is the period from the beginning of the week in which the surrender occurs to the end of the following week, a 'week' being a period of seven days beginning with a Sunday: Sch 19 para 4(2). The reduction is made by applying the following fraction to the amount otherwise chargeable:

$$\frac{I}{S}$$

where I is the number of units of the class issued by the managers in the relevant two-week period, and S is the number of units of the class surrendered to the managers in that period. If a consolidation or sub-division of units (including any alteration of the number of units of the class in question otherwise than in consequence of an increase or reduction in the trust property) affects the comparison of the number of units surrendered and the number of units issued, the numbers are to be determined as if the consolidation or sub-division had not taken place: Sch 19 para 4(3), (4).

These provisions do not apply if on the surrender of the unit the unit holder receives anything other than money, and for this purpose no account is to be taken of a surrender or issue that is not entirely for money: Sch 19 para 4(5). Any surrender and related issue which are exempt under Sch 19 para 6 (see TEXT AND NOTE 7) are to be left out of account for the purposes of Sch 19 para 4.

The amount of tax chargeable on any such reduction is further reduced if in the relevant two-week period the trust property is invested in both exempt and non-exempt investments (see PARA 1124): Sch 19 para 5(1). That reduction is made by applying the fraction:

$$\frac{N}{N+E}$$

where N is the average market value of the non-exempt investments over the relevant two-week period, and E is the average market value of the exempt investments over that period: Sch 19 para 5(2).

7 Ibid Sch 19 para 6(1), (2). Similarly, there is no charge to tax where the new owner (as so defined) is (1) a body of persons established for charitable purposes only, (2) the trustees of a trust established for those purposes only, (3) the Trustees of the National Heritage Memorial Fund, or (4) the Historic Buildings and Monuments Commission for England: Sch 19 para 6(3). Instruments executed at the time of the surrender in pursuance of arrangements between the person entitled to the unit and the new owner, and transferring the unit from the one to the other are also exempt from this charge if they would be exempt from stamp duty (were it otherwise chargeable) by virtue of Finance Act 1930 s 42 (see PARA 1090), regulations made under the Finance Act 1985 s 87(2) (see PARA 1083), or the Finance Act 1997 s 96 (see PARA 1105): Finance Act 1999 Sch 19 para 6(4), (5) (amended by the Finance Act 2005 s 97(3), (5)).

8 'Individual pension account' has the same meaning as in regulations under the Income and Corporation Taxes Act 1988 s 638A (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 714) (as at 6 April 2001: see the Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2001, SI 2001/117, reg 4): Finance Act 1999 Sch 19 para 6A(4) (Sch 19 para 6A added by the Finance Act 2001 s 93(4)). From 6 April 2006 the term has the meaning given by regulations made by the Commissioners of Inland Revenue; such regulations must be made by statutory instrument which is subject to annulment in pursuance of a resolution of the House of Commons: 1999 Act Sch 19 para 6A(4), (5) (Sch 19 para 6A(4) amended, Sch 19 para 6A(5) added, by the Finance Act 2004 Sch 35 para 46).

9 The certificate must be given by the persons making the relevant monthly tax return, and must state (1) that at all times in the period to which the return relates the trustees or managers were able to identify which of the units under the scheme were held within individual pension accounts; and (2) that at no time in that period

have the trustees or managers imposed any charge on, or recovered any amount from, an IPA unit holder which included an amount directly or indirectly attributable to tax payable by the trustees under the Finance Act 1999 Sch 19 Pt II (paras 2-9): Sch 19 para 6A(2) (Sch 19 para 6A as added: see NOTE 8). 'IPA unit holder' means (a) a person acquiring, or who has acquired, a unit under the unit trust scheme where the unit is to be held within an individual pension account; (b) a person holding a unit under the scheme, where the unit is held within the individual pension account; or (c) a person surrendering, or who has surrendered, a unit under the scheme, where immediately before the surrender the unit is or was held within an individual pension account: Sch 19 para 6A(3) (Sch 19 para 6A as added). 'The relevant monthly tax return', in the case of any surrender, means the notice required by regulations under the Finance Act 1986 s 98 (see PARA 1138) to be given by the managers (or, failing that, the trustees) under the unit trust scheme to the Inland Revenue containing among other things details of all surrenders in the relevant two-week period: Finance Act 1999 Sch 19 para 6A(4) (Sch 19 para 6A as added). For the meaning of 'the relevant two-week period' see NOTE 6.

10 Ibid Sch 19 para 6A(1) (Sch 19 para 6A as added: see NOTE 8). If a certificate is given in accordance with head (c) of the TEXT in respect of a period which includes the relevant two-week period in the case of the unit in question in Sch 19 para 4(1) (see TEXT AND NOTE 6), there must be left out of account in applying that provision in relation to that unit (1) any issue of a unit which is to be held within an individual pension account; and (2) any surrender of a unit which, immediately before the surrender, was held within an individual pension account: Sch 19 para 4(6), (7) (added by the Finance Act 2001 s 93(3)).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(2) THE CHARGE TO TAX/(ii) Arrangements; Depositary Receipts and Clearance Services/1122. The higher rate charge in respect of arrangements; depositary receipts.

## (ii) Arrangements; Depositary Receipts and Clearance Services

### 1122. The higher rate charge in respect of arrangements; depositary receipts.

Subject to certain exceptions[1], a charge to stamp duty reserve tax is made where in pursuance of an arrangement (1) a person whose business is or includes issuing depositary receipts for chargeable securities[2] has issued or is to issue such a depositary receipt[3]; and (2) chargeable securities of the same kind and amount are transferred or issued to a person whose business is or includes holding chargeable securities as nominee or agent for the person who has issued or is to issue the depositary receipt[4], or are appropriated by such a person towards the eventual satisfaction of the entitlement of the holder of the depositary receipt to receive chargeable securities[5].

Where tax is or would otherwise be charged in respect of a transfer of securities, and ad valorem stamp duty[6] is chargeable on any instrument effecting the transfer, then if the amount of the duty is less than the amount of tax found by virtue of the relevant statutory provisions[7], the tax charged is the amount so found less the amount of the duty[8]. In any other case, there is no charge to tax in respect of the transfer under the depositary receipts provisions[9].

Tax is ordinarily charged[10] at the rate of £1.50 for every £100 or part of £100 of the following:

350 (a) in a case where the securities are issued, their price when issued[11];
351 (b) in a case where the securities are transferred for consideration in money or money's worth, the amount or value of the consideration[12];
352 (c) in any other case, the value of the securities[13].

Where, however, the securities are transferred and

353 (i) the transfer is effected by an instrument on which stamp duty under the heading 'Conveyance or Transfer of any kind not hereinbefore described'[14] is chargeable;
354 (ii) at the time of the transfer the transferor is a qualified dealer[15] in securities of the kind concerned or a nominee of such a qualified dealer;
355 (iii) the transfer is made for the purposes of the dealer's business;
356 (iv) at the time of the transfer the dealer is not a market maker[16] in securities of the kind concerned; and
357 (v) the instrument contains a statement that heads (ii) to (iv) above are fulfilled,

tax is charged at the rate of £1 for every £100 or part of £100 of the price, amount or value as the case may be[17].

The person who has issued or is to issue the depositary receipt is ordinarily liable for the tax[18]; but where tax is charged under these provisions in a case where securities are transferred, and at the time of the transfer the person who has issued or is to issue the depositary receipt is not resident in the United Kingdom[19] and has no branch or agency in the United Kingdom, the person liable for the tax is the person to whom the securities are transferred[20].

Where chargeable securities are issued or transferred on sale under terms providing for payment in instalments and for an issue of other chargeable securities, and tax would otherwise be charged under these provisions in respect of that issue, tax is not so charged[21], but if any of the instalments becomes payable by a person whose business is or includes issuing depositary receipts for chargeable securities or holding chargeable securities as nominee or agent for the person who has issued or is to issue the depositary receipt[22], there is a charge to stamp duty reserve tax under these provisions when the instalment becomes payable[23]. The charge is at the rate of £1.50 for every £100 or part of £100 of the instalment payable[24], and the person liable to pay the instalment is liable for the tax[25].

1 See the Finance Act 1986 s 95; and PARA 1130 post.

2 Ie a person falling within ibid s 93(2): s 93(1)(a), (2). For the purposes of s 93, a depositary receipt for chargeable securities is an instrument acknowledging (1) that a person holds chargeable securities or evidence of the right to receive them; and (2) that another person is entitled to rights, whether expressed as units or otherwise, in or in relation to chargeable securities of the same kind including the right to receive such securities (or evidence of the right to receive them) from the person mentioned in head (1) supra: s 94(1). Such a depositary receipt does not, however, include an instrument acknowledging rights in or in relation to securities if they are issued or sold under terms providing for payment in instalments and for the issue of the instrument as evidence that an instalment has been paid: s 94(1). For the meaning of 'unit' see PARA 1029 note 4 ante; and as to the application of this definition see PARA 1120 note 3 ante. For the meaning of 'chargeable securities' see s 99 (as amended); and PARA 1124 post.

The Treasury may by regulations provide that for s 94(1) (as it has effect for the time being) there is to be substituted a subsection containing a different definition of a depositary receipt for the purposes of s 93: s 94(2). The power to make regulations under s 94 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 94(9). At the date at which this volume states the law, no such regulations had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS. Section 94 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

3 Finance Act 1986 s 93(1).

4 Ie a person falling within ibid s 93(3): s 93(1)(b), (3).

5 Ibid s 93(1)(b).

6 As to the charge to ad valorem duty see PARA 1027 et seq ante.

7 Ie by virtue of ibid s 93(4)-(6): see the text and notes 10-17 infra.

8 Ibid s 93(7)(a).

9 Ibid s 93(7)(b).

10 Ie subject to ibid s 93(5)-(7): s 93(4).

11 Ibid s 93(4)(a).

12 Ibid s 93(4)(b). For these purposes, the value of any consideration not consisting of money is taken to be the price it might reasonably be expected to fetch on a sale in the open market at the time the securities are transferred: ibid s 94(3).

13 Ibid s 93(4)(c). The value of the securities is taken to be the price they might reasonably be expected to fetch on a sale in the open market at the time they are transferred or appropriated, as the case may be: s 94(4).

In a case where: (1) securities are issued, or securities sold are transferred and (in either case) they are to be paid for in instalments; (2) the person to whom they are issued or transferred holds them and transfers them to another person when the last instalment is paid; (3) s 93(4)(c) applies in the case of the transfer to the other person; (4) before the making of the transfer to the other person an instrument is received by a person falling within s 93(3); (5) the instrument so received evidences all the rights which (by virtue of the terms under which the securities are issued or sold as mentioned in head (1) supra) subsist in respect of them at the time of the receipt; and (6) the transfer to the other person is effected by an instrument containing a statement that heads (1), (2), (5) supra are fulfilled, s 93(4)(c) has effect as if the reference to the value there mentioned were to an

amount (if any) equal to the total of the instalments payable, less those paid before the transfer to the other person is effected: s 93(6)(a)-(f).

14 See the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described'; and PARA 1077 ante.

15 For these purposes, a person is a qualified dealer in securities of a particular kind if he deals in securities of that kind and (1) is a member of a recognised stock exchange within the meaning given by the Income and Corporation Taxes Act 1988 s 841; or (2) is designated a qualified dealer by order made by the Treasury: Finance Act 1986 s 94(5) (amended by the Finance Act 1988 s 146, Sch 13 paras 23, 25). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: Finance Act 1986 s 94(9). At the date at which this volume states the law, no such order had been made.

16 For these purposes, a person is a market maker in securities of a particular kind if he (1) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of that kind at a price specified by him; and (2) is recognised as doing so by the Council of the Stock Exchange: ibid s 94(6). The Treasury may by regulations provide that for s 94(6) there is to be substituted a subsection containing a different definition of a market maker for the purposes of s 93(5): s 94(7). At the date at which this volume states the law, no such regulations had been made. As to the making of regulations see note 2 supra.

17 Ibid s 93(5). Where the securities were transferred before 27 October 1986, the rate was 50p for every £100 or part of £100: ss 93(5), 94(8).

18 Ibid s 93(8).

19 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

20 Finance Act 1986 s 93(9).

21 Ibid s 93(10).

22 Ie a person falling within ibid s 93(2) or (3): see the text and notes 2-4 supra.

23 Ibid s 93(10)(a).

24 Ibid s 93(10)(b).

25 Ibid s 93(10)(c). Section 93 applies where securities were transferred, issued or appropriated after 18 March 1986 (whenever the arrangement was made), but does not apply, in the case of securities which are transferred, if the Commissioners of Inland Revenue are satisfied that they were acquired or appropriated by the transferor on or before 18 March 1986 for or towards the eventual satisfaction of the entitlement of a person to receive securities of the same kind under a depositary receipt (whether issued on or before that date or to be issued after that date): ss 93(11), (12), 99(2). Section 93 is prospectively repealed by the Finance Act 1990 Sch 19 Pt VII as from the abolition day.

## UPDATE

### 1122-1123 The higher rate charge in respect of arrangements; depositary receipts, The higher rate charge in respect of arrangements; clearance services

The higher rate charges do not apply to transfers between a depositary receipt system and a clearance system: see the Finance Act 1986 s 97B; and PARA 1123B.

### 1122 The higher rate charge in respect of arrangements; depositary receipts

TEXT AND NOTES 1-5--Head (2) now extends to the transfer or issue of securities to, or their appropriation by, a person falling within head (1): Finance Act s 93(1) (amended by the Finance Act 1996 s 193(2), (4)).

TEXT AND NOTES 10-13--The charge is now at the rate of 1·5 per cent (rounded up to the nearest penny): 1986 Act ss 93(4), 99(13) (both amended by the Finance Act 1996 s 194(2)(a), (6), (7)).

NOTE 13--In head (4), the reference to the Finance Act 1986 s 93(3) is extended to s 93(2): s 93(6) (amended by the Finance Act 1996 s 193(3), (4)).

TEXT AND NOTES 14-17--1986 Act s 93(5) repealed: Finance Act 1997 s 104(1).

TEXT AND NOTES 24, 25--The charge is now at the rate of 1·5 per cent (rounded up to the nearest penny): 1986 Act s 93(10) (amended by the Finance Act 1996 s 194(2)(c), (7)(c)), 1986 Act s 99(13) (added by the Finance Act 1996 s 194(6)).

**1123. The higher rate charge in respect of arrangements; clearance services.**

Subject to certain exceptions[1] a charge to stamp duty reserve tax is made where (1) a person ('A') whose business is or includes the provision of clearance services for the purchase and sale of chargeable securities[2] has entered into an arrangement to provide such clearance services for another person; and (2) in pursuance of the arrangement, chargeable securities are transferred or issued to A or to a person whose business is or includes holding chargeable securities as nominee for A[3].

Where tax is or would otherwise be so charged in respect of a transfer of securities, and ad valorem stamp duty[4] is chargeable on any instrument effecting the transfer, then, if the amount of the duty is less than the amount of tax found by virtue of the relevant statutory provisions[5], the tax charged is the amount so found less the amount of the duty[6]. In any other case, there is no charge to tax under the clearance services provisions in respect of the transfer[7].

Tax is ordinarily charged[8] at the rate of £1.50 for every £100 or part of £100 of the following:

358 (a) in a case where the securities are issued, their price when issued[9];
359 (b) in a case where the securities are transferred for consideration in money or money's worth, the amount or value of the consideration[10]; or
360 (c) in any other case, the value of the securities[11].

Where, however, the securities are transferred and:

361 (i) the transfer is effected by an instrument on which stamp duty under the heading 'Conveyance or Transfer of any kind not hereinbefore described'[12] is chargeable;
362 (ii) at the time of the transfer the transferor is a qualified dealer[13] in securities of the kind concerned or a nominee of such a qualified dealer;
363 (iii) the transfer is made for the purposes of the dealer's business;
364 (iv) at the time of the transfer the dealer is not a market maker[14] in securities of the kind concerned; and
365 (v) the instrument contains a statement that heads (ii) to (iv) above are fulfilled,

tax is charged at the rate of £1 for every £100 or part of £100 of the price, amount or value as the case may be[15].

The person ordinarily liable for the tax is A[16]; but where tax is charged under these provisions in a case where securities are transferred to a person other than A, and at the time of the transfer A is not resident in the United Kingdom[17] and has no branch or agency in the United Kingdom, the person liable for the tax is the person to whom the securities are transferred[18].

Where chargeable securities are issued or transferred on sale under terms providing for payment in instalments and for an issue of other chargeable securities, and tax would otherwise be chargeable under these provisions in respect of that issue, tax is not so charged[19]; but if any of the instalments becomes payable by A or by a person whose business is or includes holding chargeable securities as nominee for A, there is a charge to stamp duty reserve tax under these provisions when the instalment becomes payable[20]. The charge is at

the rate of £1.50 for every £100 or part of £100 of the instalment payable[21] and the person liable to pay the instalment is liable for the tax[22].

1 See the Finance Act 1986 s 97; and PARA 1131 post.

2 For the meaning of 'chargeable securities' see PARA 1124 post.

3 Finance Act 1986 s 96(1).

4 As to the ad valorem charge to stamp duty see PARA 1027 et seq ante.

5 Ie in accordance with the Finance Act 1986 s 96(2)-(4): see the text and notes 8-15 infra.

6 Ibid s 96(5)(a).

7 Ibid s 96(5)(b).

8 Ie subject to ibid s 96(3)-(5): s 96(2).

9 Ibid s 96(2)(a).

10 Ibid s 96(2)(b). For these purposes, the value of any consideration not consisting of money is taken to be the price it might reasonably be expected to fetch for sale on the open market at the time the securities are transferred: s 96(9). Cf s 94(3); and see PARA 1122 note 12 ante.

11 Ibid s 96(2)(c). For these purposes, the value of the securities is taken to be the price they might reasonably be expected to fetch on a sale on the open market at the time they are transferred: s 96(10). Cf s 94(4) (which is identical in relevant respects); and see PARA 1122 note 13 ante.

In a case where (1) securities are issued, or securities sold are transferred, and (in either case) they are to be paid for in instalments; (2) the person to whom they are issued or transferred holds them and transfers them to another person when the last instalment is paid; (3) s 96(2)(c) applies in the case of the transfer to the other person; (4) before the making of the transfer to the other person an instrument is received by A or a person whose business is or includes holding chargeable securities as nominee for A; (5) the instrument so received evidences all the rights which (by virtue of the terms under which the securities are issued or sold as mentioned in head (1) supra) subsist in respect of them at the time of the receipt; and (6) the transfer to the other person is effected by an instrument containing a statement that heads (1), (2), (5) supra are fulfilled, s 96(2)(c) has effect as if the reference to the value there mentioned were to an amount (if any) equal to the total of the instalments payable, less those paid before the transfer to the other person is effected: s 96(4).

12 Ie under the Stamp Act 1891 s 1, Sch 1, 'Conveyance or Transfer of any kind not hereinbefore described': see PARA 1077 ante.

13 For these purposes, 'qualified dealer' has at any particular time the same meaning as it has at that time for the purposes of the Finance Act 1986 s 93(5) (see PARA 1122 note 15 ante): s 96(11).

14 For these purposes 'market maker' has at any particular time the same meaning as it has at that time for purposes of ibid s 93(5) (see PARA 1122 note 16 ante): s 96(11).

15 Ibid s 96(3). Where the securities were transferred before 27 October 1986, the rate was 50p for every £100 or part of £100: s 96(5), (12). Cf s 93(5); and see PARA 1122 ante.

16 Ibid s 96(6).

17 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

18 Finance Act 1986 s 96(7). Cf s 93(9); and see PARA 1122 text and note 20 ante.

19 Ibid s 96(8).

20 Ibid s 96(8)(a). Cf s 93(10)(a); and see PARA 1122 ante.

21 Ibid s 96(8)(b). Cf s 93(10)(b); and see PARA 1122 ante.

22 Ibid s 96(8)(c). Cf s 93(10)(c); and see PARA 1122 ante.

Section 96 applies where securities are transferred or issued after 18 March 1986, whenever the arrangement was made (s 96(13)); but does not apply, in the case of securities which are transferred, if the Commissioners of Inland Revenue are satisfied (1) that on or before 18 March 1986 the transferor (or, where the transferor transfers as agent, the principal) agreed to sell securities of the same kind and amount to the person (other than A) referred to in s 96(1)(a); and (2) that the transfer was effected in pursuance of that agreement (s 96(14)). Section 96 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

### 1122-1123 The higher rate charge in respect of arrangements; depositary receipts, The higher rate charge in respect of arrangements; clearance services

The higher rate charges do not apply to transfers between a depositary receipt system and a clearance system: see the Finance Act 1986 s 97B; and PARA 1123B.

### 1123 The higher rate charge in respect of arrangements; clearance services

TEXT AND NOTES--The levying of stamp duty reserve tax on the issue of shares into a clearance service is prohibited by EC Council Directive 69/335 art 11 (replaced by EC Council Directive 2008/7 art 5): Case C-569/07 *HSBC Holdings plc v Revenue and Customs Comrs* [2010] STC 58, ECJ. As to elections for an alternative system of charge, see PARA 1123A.

NOTE 1--See also the Finance Act 1996 s 97A and PARA 1123A.

NOTE 3--1986 Act s 96(1) amended: Finance Act 1996 s 196(2).

TEXT AND NOTES 8-11--The charge is now at the rate of 1·5 per cent (rounded up to the nearest penny): Finance Act 1986 s 96(2) (amended by the Finance Act 1996 s 194(4)(a), (7)), Finance Act 1986 s 99(13) (added by the Finance Act 1996 s 194(6)).

TEXT AND NOTES 12-15--1986 Act s 96(3) repealed: Finance Act 1997 s 104(2).

TEXT AND NOTES 19-22--The charge is now at the rate of 1·5 per cent (rounded up to the nearest penny): Finance Act 1986 s 96(8) (amended by the Finance Act 1996 s 194(4)(c), (7)), Finance Act 1986 s 96(13).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(2) THE CHARGE TO TAX/(ii) Arrangements; Depositary Receipts and Clearance Services/1123A. Clearance services: election for alternative system of charge.

**1123A. Clearance services: election for alternative system of charge.**

A person whose business is or includes the provision of clearance services for the purchase and sale of chargeable securities[1] or relevant securities[2] (an 'operator') may elect that stamp duty and stamp duty reserve tax be chargeable in connection with those clearance services in accordance with the following provisions[3].

If and so long as such an election is in force, stamp duty or stamp duty reserve tax (as the case may require), in connection with the clearance services to which the election relates, is chargeable in relation to specified transfers or issues[4] or agreements[5] as it would otherwise[6] be chargeable[7].

1 For the meaning of 'chargeable securities', see PARA 1124.

2 For the meaning of 'relevant securities, see PARA 1072.

3 Finance Act 1986 s 97A(1), (12) (s 97A added by the Finance Act 1996 s 196(3), (6)). The election must be approved by the Board of the Inland Revenue and comes into force on such date as may be notified by the Board to the operator in giving that approval. An election continues in force unless and until it is terminated by not less than 30 days' notice given by the operator to the Board (or by the Board to the operator), or (if there is or has been a breach of a condition of the approval of the election imposed by virtue of the Finance Act 1986 s 97A(6) or (7) by a notice given by the Board to the operator, taking effect on the giving of the notice or at such later date as may be specified therein and stating that it is given by reason of the breach of condition: s 97A(2), (10). Where an election is terminated s 96 (see PARA 1123) has effect as if chargeable securities of the same amounts and kinds as are, immediately before the termination, held by the operator or his nominee in connection with the provision of the clearance services, had, immediately after the termination, been transferred to the operator or, as the case may be, to the nominee by a transfer falling within s 96(1): s 97A(11).

The Board may require the operator, as a condition of the approval of his election, to make and maintain such arrangements as they may consider satisfactory for the collection of stamp duty reserve tax chargeable in accordance with these provisions, and for complying, or securing compliance, with the provisions of Pt IV (ss 86-99) and regulations made under s 98, so far as relating to such tax: s 97A(6). Where the operator is not resident in the United Kingdom and has no branch or agency in this country, the Board may require him, as a condition of the approval of his election, to appoint and, so long as the election remains in force, maintain, a tax representative: s 97A(7) (as added). Such a representative must have a business establishment in the United Kingdom and be approved by the Board: s 97A(8). He (1) is entitled to act on the operator's behalf for the purposes of stamp duty and stamp duty reserve tax in connection with the clearance services to which the election relates; (2) must secure (where appropriate by acting on the operator's behalf) the operator's compliance with and discharge of the obligations and liabilities to which the operator is subject in connection with those services (including obligations and liabilities which arose before the tax representative's appointment); and (3) is personally liable in respect of any failure to secure such compliance or discharge, and in respect of anything done for purposes connected with acting on the operator's behalf; in each case as if the obligations and liabilities imposed on the operator were imposed jointly and severally on the tax representative and the operator: s 97A(9).

4 Ie falling within ibid s 70(1) (see PARA 1072) or s 96(1) (see PARA 1123).

5 Ie falling within ibid s 90(4) (see PARA 1128) by virtue of s 96(1) (see PARA 1123) or s 90(5) (see PARA 1128).

6 Ie apart from ibid ss 70, 90(4), (5), 96(1).

7 Ibid s 97A(3). Where stamp duty or stamp duty reserve tax is chargeable under these provisions by virtue of an election, those set out in NOTE 6 are not to have effect: s 97A(4), (5).

Nothing in the Finance Act 1986 s 70(9) (see PARA 1072) or s 97(1) (see PARA 1131) has effect to prevent a charge to stamp duty reserve tax arising on a transfer to which s 97A(5) applies, or on a deemed transfer under s 97A(11): Finance Act 1986 s 97A(13) (s 97A(13) added by the Finance Act 2000 s 134(4)).

**UPDATE**

**1122-1123 The higher rate charge in respect of arrangements; depositary receipts, The higher rate charge in respect of arrangements; clearance services**

The higher rate charges do not apply to transfers between a depositary receipt system and a clearance system: see the Finance Act 1986 s 97B; and PARA 1123B.

**1123B. Transfers between depositary receipt system and clearance system.**

Where securities are transferred between a depositary receipt system and a clearance system[1], the higher rate charges to stamp duty reserve tax in respect of arrangements[2] do not apply[3].

1 A transfer between a depositary receipt system and a clearance system means a transfer (1) from or to a company which at the time of the transfer falls within the Finance Act 1986 s 67(6) (see PARA 1070), and (2) to or from a company that at that time falls within s 70(6) (see PARA 1072): Finance Act 1986 s 97B(2) (s 97B added by the Finance Act 2000 s 134(2)).

2 Ie under the Finance Act 1986 s 93 (see PARA 1122) or 96 (see PARA 1123).

3 Ibid s 97B(1) (s 97B as added: see NOTE 1). These provisions do not apply to a transfer from such a company as is mentioned in NOTE 1 head (2) if at the time of the transfer an election is in force under s 97A (see PARA 1123A) in relation to the clearance services for the purposes of which the securities are held immediately after the transfer: s 97B(3) (s 97B as so added).

**UPDATE**

**1122-1123 The higher rate charge in respect of arrangements; depositary receipts, The higher rate charge in respect of arrangements; clearance services**

The higher rate charges do not apply to transfers between a depositary receipt system and a clearance system: see the Finance Act 1986 s 97B; and PARA 1123B.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(2) THE CHARGE TO TAX/(iii) Chargeable Securities/1124. Meaning of 'chargeable securities'.

## (iii) Chargeable Securities

### 1124. Meaning of 'chargeable securities'.

For the purposes of stamp duty reserve tax, 'chargeable securities' means (1) stocks, shares or loan capital; (2) interests in, or interests in dividends or other rights arising out of, stocks, shares or loan capital; (3) rights to allotments of or to subscribe for, or options to acquire, stocks, shares or loan capital; and (4) units under a unit trust scheme[1].

'Chargeable securities' does not, however, include securities falling within heads (1), (2) or (3) above which are issued or raised by a body corporate not incorporated in the United Kingdom[2] unless:

366 (a) they are registered in a register kept in the United Kingdom by or on behalf of the body corporate by which they are issued or raised; or
367 (b) in the case of shares, they are paired with shares issued by a body corporate incorporated in the United Kingdom[3]; or
368 (c) in the case of securities falling within heads (2) or (3) above, head (a) or head (b) above applies to the stocks, shares or loan capital to which they relate[4].

Nor does that term include:

369 (i) securities whose transfer is exempt from all stamp duties[5];
370 (ii) securities falling within heads (2) or (3) above which relate to stocks, shares or loan capital the transfer of which is exempt from all stamp duties[6];
371 (iii) interests in depositary receipts for stocks or shares[7].

1 Finance Act 1986 s 99(3)(a)-(d) (substituted by the Finance Act 1988 s 144(2)). For the meaning of 'unit' and 'unit trust scheme' see PARA 1120 note 2 ante. The Treasury may, by regulation, make such provision as it considers appropriate for securing that the Finance Act 1986 Pt IV (ss 86-99) (as amended) (see PARA 1118 et seq ante, 1125 et seq post) has effect in relation to (1) open-ended investment companies of any such description as may be specified in the regulations; (2) holdings in, and the assets of, such companies; and (3) transactions involving such companies, in a manner corresponding, subject to such modifications as the Treasury considers appropriate, to the manner in which it has effect in relation to unit trusts, to rights under, and the assets subject to, such trusts and to transactions for purposes connected with such trusts: Finance Act 1995 s 152(1), (2)(b). As to the specific provision which may be made by regulations under s 152 see s 152(3). At the date at which this volume states the law, no such regulations had been made. For the meaning of 'open-ended investment company' see PARA 1074 note 14 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Finance Act 1988 s 144 applies in relation to agreements to transfer chargeable securities made on or after 9 December 1987 and the transfer, issue or appropriation of such securities, or the issue of securities such as are mentioned in the Finance Act 1986 s 99(11) (as added: see note 4 infra), on or after that date in pursuance of an arrangement such as is mentioned therein, whenever the arrangement was made; and is deemed to have come into force on that date: s 114(6).

2 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

3 For these purposes, shares issued by a body corporate which is not incorporated in the United Kingdom ('the foreign company') are paired with shares issued by a body corporate which is so incorporated ('the UK company') (1) where (a) the articles of association of the UK company and the equivalent instruments governing the foreign company each provide that no share in the company to which they relate may be transferred other than as part of a unit comprising one share in that company and one share in the other; and (b) such units have been offered for sale to the public in the United Kingdom and, at the same time, other such

units have been offered for sale to the public at a broadly equivalent price in the country in which the foreign company is incorporated (Finance Act 1986 s 99(6A) (added by the Finance Act 1988 s 144(2); amended by the Finance Act 1990 s 113(1), (2) so as to substitute the words 'other such units' for the words 'an equal number of such units' in head (b) supra); and (2) where (a) the articles of association of the UK company and the equivalent instruments governing the foreign company each provide that no share in the company to which they relate may be transferred otherwise than as part of a unit comprising one share in that company and one share in the other; and (b) the shares issued by the foreign company and the shares issued by the UK company are issued to give effect to an allotment of the shares, as part of such units, as fully or partly paid bonus shares (Finance Act 1986 s 99(6B) (added by the Finance Act 1990 s 113(1), (3))). The amendment made by s 113(2) applies where the offers referred to in the Finance Act 1986 s 99(6A) (as so added and amended) are made on or after 26 July 1990 and before the offers are made, units comprising shares in the two companies concerned were offered, whether before or after that date, in circumstances where s 99(6A) (as so added) applied as originally enacted: Finance Act 1990 s 113(5). The amendments made by s 113(1), (3), (4) apply where the shares referred to in the Finance Act 1986 s 99(6B) (as so added) are issued on or after 26 July 1990 and before they are issued, units comprising shares in the two companies concerned were offered, whether before or after that date, in circumstances where s 99(6A) (as so added) applied as originally enacted: Finance Act 1990 s 113(6).

4 Finance Act 1986 s 99(4) (substituted by the Finance Act 1988 s 144(1), (2)). In interpreting 'chargeable securities' in the Finance Act 1986 ss 93, 94 (see PARA 1122 ante) and s 96 (see PARA 1123 ante), s 99(4)(a) (as so substituted) (see head (a) in the text) must be ignored: Finance Act 1986 s 99(10)(a) (substituted by the Finance Act 1988 s 144(1), (4)). In interpreting 'chargeable securities' in the Finance Act 1986 ss 93 or 96 in a case where (1) newly subscribed shares (ie shares issued wholly for new consideration in pursuance of an offer for sale to the public); or (2) securities within s 99(3)(b) or (c) (as substituted) (see heads (2)-(3) in the text) which relate to newly subscribed shares, are issued under an arrangement mentioned in s 93 or 96, or an arrangement which would be such an arrangement if the securities issued were chargeable securities, s 99(4)(b) (as so substituted) must be ignored: Finance Act 1986 s 99(11), (12) (added by the Finance Act 1988 s 144(1), (5)).

5 Finance Act 1986 s 99(5)(a) (substituted by the Finance Act 1988 s 144(1), (2)). In interpreting 'chargeable securities' in the Finance Act 1986 ss 93, 94, 96, the effect of the Companies Act 1985 s 362(3), Sch 14 para 8 (shares registered overseas) and the corresponding Northern Ireland legislation must be ignored for the purposes of the Finance Act 1986 s 99(5) (as so substituted): s 99(10)(b). As to exempt securities see PARA 1100 ante.

6 Ibid s 99(5)(b) (as substituted: see note 5 supra).

7 Ibid s 99(6) (substituted by the Finance Act 1988 s 144(1), (2)). A depositary receipt for stocks or shares is an instrument acknowledging (1) that a person holds stocks or shares or evidence of the right to receive them; and (2) that another person is entitled to rights, whether expressed as units or otherwise, in or in relation to stocks or shares of the same kind, including the right to receive such stocks or shares (or evidence of the right to receive them) from the person mentioned in head (1) supra: Finance Act 1986 s 99(7)(a), (b). However, such a depositary receipt does not include an instrument acknowledging rights in or in relation to stocks or shares if they are issued or sold under terms providing for payment in instalments and for the issue of the instrument as evidence that an instalment has been paid: s 99(7). The Treasury may by regulations provide that for s 99(7), as it has effect for the time being, there is to be substituted a subsection containing a different definition of a depositary receipt; and the power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 99(8). At the date at which this volume states the law, no such regulations had been made.

Section 99 (as amended) and the Finance Act 1988 s 144 are prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

## UPDATE

## 1124 Meaning of 'chargeable securities'

TEXT AND NOTES--The Treasury may make regulations varying this definition and making such incidental, supplementary, consequential and transitional provision as it considers necessary: Finance Act 1999 s 119. See the Stamp Duty and Stamp Duty Reserve Tax (Definition of Unit Trust Scheme and Open-ended Investment Company) Regulations 2001, SI 2001/964, reg 6. For the prospective repeal of these provisions from abolition day, see the Finance Act 1999 s 123(3); and PARAS 1004, 1005.

NOTE 1--For regulations made under the Finance Act 1995 s 152, see the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997, SI 1997/1156, PARA 1018.

TEXT AND NOTES 2-4--Also, head (d), shares issued or raised by a European company (whether or not in the course of its formation in accordance with EC Council Regulation 2157/2001, on the Statute for a European Company, art 2 and, at the time when it falls to be determined whether the securities are chargeable securities, that company has its registered office in the United Kingdom: Finance Act 1986 s 99(4)(d) (added by Finance (No 2) Act 2005 s 57). 'Chargeable securities' does not include securities falling within heads (a) to (c) of the TEXT if they are securities issued or raised by a European company (whether or not in the course of its formation as set out above) and, at the time when it falls to be determined whether the securities are chargeable securities, that company has its registered office outside the United Kingdom: s 99(4A) (added by Finance (No 2) Act 2005 s 57).

NOTE 3--Finance Act 1990 s 113(4) repealed: Finance Act 1999 Sch 20 Pt V(5).

NOTES 4, 5--The amended interpretations also apply for the purposes of the Finance Act 1986 ss 95 (see PARA 1130), 97 (see PARA 1131) and 97A (see PARA 1123A): s 99(10) (amended by Finance Act 1996 s 196(5), (6); and Finance Act 1998 s 151(5)).

TEXT AND NOTES 5, 6--Replaced. 'Chargeable securities' does not include securities falling within heads (1)-(3) if (i) in the case of stock or marketable securities (within the meaning of the Finance Act 2003 s 125), they are securities the transfer of which is exempt from all stamp duties, and (ii) in any other case, they are securities the transfer of which, disregarding s 125, would be exempt from all stamp duties. In the case of securities falling within head (2) or (3), they are not chargeable securities if the above conditions are met in respect of the stocks, shares or loan capital to which those securities relate: Finance Act 1986 s 99(5), (5ZA) (substituted by SI 2003/2868).

TEXT AND NOTE 5--Units under a unit trust scheme are excluded (under new provisions having effect until abolition day (see PARAS 1004, 1005) from the definition of 'chargeable securities' if (a) all the trustees under the scheme are resident outside the United Kingdom and the unit is not registered in a register kept in the United Kingdom by or on behalf of the trustees under the scheme, or (b) under the terms of the scheme the trust property can only be invested in exempt investments: Finance Act 1986 s 99(5A) (s 99(5A), (5B) added by Finance Act 1999 Sch 19 para 12(3); and amended by SI 2003/2868). An investment other than an interest under a collective investment scheme is an exempt investment if, and only if, (i) it is not an investment on the transfer of which ad valorem stamp duty would be chargeable, (ii) it is not an investment on the acquisition of which stamp duty land tax would be chargeable under the Finance Act 2003 Pt 4, and (iii) it is not a chargeable security: Finance Act 1999 s 99(5B)(a). An interest under a collective investment scheme is an exempt investment if, and only if, the scheme is an authorised unit trust scheme or an open-ended investment company and under the terms of the scheme the property subject to the scheme cannot be invested in such a way that income can arise to the trustees or the company that will be chargeable to tax in their hands otherwise than under Schedule D Case III, and can only be invested in exempt investments: s 99(5B)(b). A derivative is an exempt investment if, and only if, it relates wholly to one or more exempt investments: s 99(5B)(c). Funds held for the purposes of the day-to-day management of the unit trust scheme are not regarded as investments for this purpose: s 99(5B)(d). 'Authorised unit trust', 'collective investment scheme' and 'open-ended investment company' have the same meanings as in the Financial Services and Markets Act 2000 Pt 17 (ss 235-284: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603): Finance Act 1986 s 99(5B) (amended by SI 2001/3629). For the meaning of 'unit trust scheme' and related expressions see PARA 1121A.

NOTE 5--The reference is now to the Companies Act 2006 s 133(3) (see COMPANIES vol 14 (2009) PARA 360): Finance Act 1986 s 99(10)(b) (amended by SI 2009/1890).

## (3) EXCEPTIONS AND EXEMPTIONS

### 1125. Brokers, dealers and market makers.

The stamp duty reserve tax charge in respect of agreements to transfer chargeable securities between A and B[1] does not apply as regards an agreement to transfer securities:

372 (1) made by B in the ordinary course of his business as a market maker[2] in securities of the kind concerned[3];

373 (2) made by B or his nominee if the agreement is made by B in the ordinary course of his business as a market maker in securities consisting of related quoted options[4];

374 (3) to B or his nominee if:

35

57. (a) the agreement is made by B as principal in the ordinary course of his business as a broker and dealer[5] in relation to securities of the kind concerned; and

58. (b) before the end of the period of seven days beginning with the day on which the agreement is made (or, in a case where the agreement is conditional, the day on which the condition is satisfied), B enters into an unconditional agreement to sell the securities to another person[6].

36

1 Ie the charge under the Finance Act 1986 s 87 (as amended): see PARAS 1120-1121 ante. For the meaning of 'chargeable securities' see PARA 1124 ante.

2 For the purposes of this exception a person is a market maker in securities of a particular kind (1) if he holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of that kind at a price specified by him, and is recognised as doing so by the Council of the Stock Exchange; or (2) if (a) he is an authorised person under the Financial Services Act 1986 Pt 1 Ch III (ss 7-34); (b) he makes the agreement in the course of his business as a dealer in investments, within the meaning of s 1, Sch 1 para 12 as a principal and in circumstances where Sch 1 para 12 is applicable for the purposes of that Act; (c) he does not make the agreement in the course of any activities which fall within Sch 1 paras 14 or 16; and (d) the securities are not, at the time the agreement is made, dealt in on a recognised investment exchange within the meaning of that Act; or (3) if (a) that person is a European institution, within the meaning of the Banking Co-ordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 3, which carries on investment business (within the meaning of the Financial Services Act 1986 s 1(2)) in the United Kingdom; (b) the agreement is made by the institution as a principal in the course of its investment business; (c) the agreement is not made in the course of any activities which fall within Sch 1 paras 14 or 16; and (d) the securities are not at the time the agreement is made dealt in on a recognised investment exchange within the meaning of the Financial Services Act 1986: Finance Act 1986 s 89(3)(c) (substituted by the Finance Act 1986 (Stamp Duty and Stamp Duty Reserve Tax) (Amendment) Regulations 1992, SI 1992/3286, reg 3).

The Treasury may by regulations provide that for the Finance Act 1986 s 89(3), as it has effect for the time being, there is to be substituted a subsection containing a different definition of a market maker for these purposes: s 89(5). The power to make regulations under s 89 (as amended) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 89(9). In exercise of the power so conferred, the Treasury has made the Finance Act 1986 (Stamp Duty and Stamp Duty Reserve Tax) (Amendment) Regulations 1992 (see heads (1)-(3) supra), which came into force on 1 January 1993 (reg 1). Cf the Finance Act 1986 s 81(3) (as substituted; exemption of certain transactions, rather than the making of agreements, from stamp duty); and see PARA 1104 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ibid s 89(1).

4 Ibid s 89(1A) (added by the Finance Act 1987 s 56, Sch 7 para 4). 'Quoted options' means options quoted on the Stock Exchange; and 'related quoted options' means quoted options to buy or sell securities of the kind transferred: Finance Act 1986 s 89(1A) (as so added).

5 For these purposes, a person is a broker and dealer in relation to securities of a particular kind if he is a member of the Stock Exchange who carries on his business in the United Kingdom and is not a market maker in securities of that kind: ibid s 89(4). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante. The Treasury may by regulations provide that for s 89(4), as it has effect for the time being, there is to be substituted a subsection containing a different definition of a broker and dealer for these purposes: s 89(6). At the date at which this volume states the law, no such regulations had been made.

6 Ibid s 89(2). For the purposes of s 89(2), if the securities which B sells cannot otherwise be identified, securities must be taken as follows: (1) securities of the same kind acquired in the period of seven days ending with the day of the sale (and not taken for the purposes of a previous sale by B) must be taken before securities of that kind acquired outside that period; and (2) securities of that kind acquired earlier in that period, and not taken for the purposes of a previous sale by B, must be taken before securities of that kind acquired later in that period: s 89(7). For the purposes of s 89(7), securities are acquired when B enters into an agreement for them to be transferred to B or his nominee or (in a case where the agreement is conditional) when the condition is satisfied; and B sells securities when he enters into an unconditional agreement to sell them to another person: s 89(8).

Section 89 (as amended) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

**1125-1131 Exceptions and Exemptions**

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

**1125 Brokers, dealers and market makers**

TEXT AND NOTES--Finance Act 1986 s 89 (repealed by Finance Act 1997 Sch 18 Pt VII) replaced by 1986 Act ss 88A, 88B (added by Finance Act 1997 s 102; and amended by Finance Act 2007 Sch 21 paras 3, 4; and SI 2001/3629). Repurchases and stock lending are exempted from stamp duty reserve tax under the 1986 Act s 87 by s 89AA (substituted by Finance Act 1997 s 103(1); and amended by Finance Act 2007 Sch 21 para 6; and SI 2008/3236). The substituted provisions are in each case similar to those set out in PARA 1104, and are themselves prospectively repealed from the abolition day (see PARA 1004): Finance Act 1997 Sch 18 Pt VII.

The Treasury may by regulations extend these provisions to any market (specified by name or by description) which is not a recognised stock exchange, but is a multilateral trading facility (or, assuming compliance with the provisions of European Parliament and EC Council Directive 2004/39, on markets in financial instruments, Title II) would be such a facility: Finance (No 2) Act 2005 s 50(1), (2)(a), (3). However, the Treasury may by order revoke the words in brackets from such day as it may appoint: s 50(5). Such regulations may provide for the application of these provisions subject to any adaptations appearing to the Treasury to be necessary or expedient: s 50(4). The power to make such regulations or such an order is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of the House of Commons: s 50(7), (8). The multilateral facilities so far designated under this provision are AIM, OFEX and POSIT: Stamp Duty and Stamp Duty Reserve Tax (Extension of Exceptions relating to Recognised Exchanges) Regulations 2005, SI 2005/1990. 'Recognised stock exchange' means an EEA exchange, a recognised foreign exchange, or a recognised foreign options exchange (see PARA 1104); and 'unilateral trading

facility' has the same meaning as in Directive 2004/39: Finance (No 2) Act 2005 s 50(3).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(3) EXCEPTIONS AND EXEMPTIONS/1126. Public issues.

**1126. Public issues.**

The stamp duty reserve tax charge in respect of agreements to transfer chargeable securities between A and B[1] does not apply as regards an agreement:

375 (1) to transfer securities other than units under a unit trust scheme[2] to B or B's nominee if:

37

59. (a) the agreement is part of an arrangement, entered into by B in the ordinary course of B's business as an issuing house, under which B (as principal) is to offer the securities for sale to the public[3];

60. (b) the agreement is conditional upon the admission of the securities to the Official List of the Stock Exchange[4];

61. (c) the consideration under the agreement for each security is the same as the price at which B is to offer the security for sale; and

62. (d) B sells the securities in accordance with the arrangement referred to in head (a) above[5];

38

376 (2) if the securities to which the agreement relates are newly subscribed securities[6] other than units under a unit trust scheme and:

39

63. (a) the agreement is made in pursuance of an offer to the public made by A (as principal) under an arrangement entered into in the ordinary course of A's business as an issuing house;

64. (b) a right of allotment in respect of, or to subscribe for, the securities has been acquired by A under an agreement which is part of the arrangement;

65. (c) both of those agreements are conditional upon the admission of the securities to the Official List of the Stock Exchange; and

66. (d) the consideration for each security is the same under both agreements[7];

40

377 (3) if the securities to which the agreement relates are registered securities other than units under a unit trust scheme and:

41

67. (a) the agreement is made in pursuance of an offer to the public made by A;

68. (b) the agreement is conditional upon the admission of the securities to the Official List of the Stock Exchange; and

69. (c) under the agreement A issues to B or his nominee a renounceable letter of acceptance, or similar instrument, in respect of the securities[8].

42

1 Ie the charge under the Finance Act 1986 s 87 (as amended): see PARAS 1120-1121 ante. For the meaning of 'chargeable securities' see PARA 1124 ante.

2 For the meaning of 'unit' and 'unit trust scheme' see PARA 1029 note 4 ante; and as to the application of this definition see PARA 1120 note 2 ante.

3 The meaning of the phrase 'offer...to the public' is that in common financial parlance, ie an invitation made to the public generally: *Cheatle v IRC* [1982] 1 WLR 834 at 840, 56 TC 111 at 126 per Nourse J. An offer to a section of the public which is calculated to result, directly or indirectly, in the shares becoming available to

persons other than those receiving the offer (eg an offer involving the issue of renounceable letters of allotment) can be an offer to the public, the test being not who receives the offer, but who can accept it: see *Governments Stock and Other Securities Investment Co Ltd v Christopher* [1956] 1 All ER 490 at 493, [1956] 1 WLR 237 at 242.

4 The Treasury may by regulations amend the Finance Act 1986 s 89A(1)(b) (s 89A added by the Finance (No 2) Act 1987 s 100(1)) and the Finance Act 1986 s 89A(2)(c), (3)(b) (as so added) (see heads (2)(c), (3)(b) in the text) as those provisions have effect for the time being; and the power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 89A(4) (as so added). At the date at which this volume states the law, no such regulations had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Ibid s 89A(1) (as added: see note 4 supra).

6 'Newly subscribed securities' are securities which, in pursuance of the arrangement referred to in ibid s 89A(2)(a) (as added: see note 4 supra) (see head (2)(a) in the text), are issued wholly for new consideration: s 89A(2) (as so added). It has been held that the word 'issue' is appropriate to indicate the whole process whereby new shares are applied for, allotted and registered: *National Westminster Bank plc v IRC* [1995] 1 AC 119, [1994] 3 All ER 1, HL.

7 Finance Act 1986 s 89A(2)(as added: see note 4 supra). As to the power to amend s 89A(2)(c) (as so added) see note 4 supra.

8 Ibid s 89A(3) (as added: see note 4 supra). As to the power to amend s 89A(3)(b) (as so added) see note 4 supra. Section 89A (as so added) and the Finance (No 2) Act 1987 s 100 are prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

**1125-1131 Exceptions and Exemptions**

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

**1127. Unit trusts.**

The stamp duty reserve tax charge in respect of agreements to transfer chargeable securities between A and B[1] does not apply as regards an agreement to transfer a unit under a unit trust scheme[2]:

378 (1) to the managers under the scheme[3]; or
379 (2) if at the time the agreement is made all the trustees under the scheme are resident outside the United Kingdom[4] and the unit is not registered in a register kept in the United Kingdom by or on behalf of the trustees under the scheme[5].

1 Ie the charge under the Finance Act 1986 s 87 (as amended): see PARAS 1120-1121 ante. For the meaning of 'chargeable securities' see PARA 1124 ante.

2 For the meaning of 'unit' and 'unit trust scheme' see PARA 1029 note 4 ante; and for the application of this definition see PARA 1120 note 2 ante.

3 Finance Act 1986 s 90(1).

4 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

Finance Act 1986 s 90(2). Section 90(1), (2) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

**UPDATE**

**1125-1131 Exceptions and Exemptions**

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

**1127 Unit trusts**

TEXT AND NOTES--From 6 February 2000 until abolition day (see PARAS 1004, 1005), head (1) applies also to transfers from the managers under the scheme: Finance Act 1986 s 90(2) (amended by the Finance Act 1999 s 123(3), Sch 19 para 11(2)).

The Finance Act 1986 s 87 does not apply as regards an agreement to transfer securities which constitute property subject to the trusts of an authorised unit trust ('the target trust') to the trustees of another authorised unit trust ('the acquiring trust') if (1) the agreement forms part of an arrangement under which the whole of the available property of the target trust is transferred to the trustees of the acquiring trust; (2) under the arrangement all the units in the target trust are extinguished; (3) the consideration under the arrangement consists of or includes the issue of units ('the consideration units') in the acquiring trust to the persons who held the extinguished units; (4) the consideration units are issued to those persons in proportion to their holdings of the extinguished units; and (5) the consideration under the arrangement does not include anything else, other than the assumption or discharge by the trustees of the acquiring trust of liabilities of the trustees of the target trust: Finance Act 1997 s

100(1), (2). Where stamp duty is not chargeable on an instrument by virtue of s 95(1) (see PARA 1074A), or the Finance Act 1986 s 87 does not apply as regards an agreement by virtue of the above provisions, s 87 does not apply as regards an agreement, or a deemed agreement, to transfer a unit to the managers of the target which is made in order that the unit may be extinguished under the arrangements mentioned in the Finance Act 1997 s 95(1) or, as the case may be, head (1): s 100(3). 'Authorised unit trust' means a unit trust scheme in the case of which an order under the Financial Services and Markets Act 2000 s 243 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 608 et seq); 'the whole of the available property of the target trust; means the whole of the property subject to the trusts of the target trust, other than any property which is retained for the purpose of discharging liabilities of the trustees of the target trust; and 'unit' and 'unit trust scheme' have the same meanings as in the Finance Act 1946 Pt VII: Finance Act 1997 s 100(4) (amended by SI 2001/3629). Each of the parts of an umbrella scheme (and not the scheme as a whole) is regarded for these purposes as an authorised unit trust; and 'umbrella scheme' has the same meaning as in the Income and Corporation Taxes Act 1988 s 468, in accordance with which references to parts of an umbrella scheme are also to be construed: Finance Act 1997 s 100(5).

The exemption is extended to (3) an agreement to transfer a unit under such a scheme if an instrument executed at the same time as that agreement and giving effect to it would be exempt from stamp duty (if stamp duty were otherwise chargeable) by virtue of the Finance Act 1942 s 30 (see PARA 1090), the Finance Act 1985 s 87(2) (see PARA 1083) or the Finance Act 1997 s 96 (see PARA 1105); and (4) an agreement to transfer trust property to the unit holder on the surrender (see PARA 1121A) to the managers of a unit under such a scheme: Finance Act 1986 s 90(1A), 1B) (added by the Finance Act 1999 Sch 19 para 11(3), (4); s 90(1A) amended by the Finance Act 2005 s 97(2)). Finance Act 1986 s 90(2) accordingly repealed: Finance Act 1999 Sch 20 Pt V(5).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(3) EXCEPTIONS AND EXEMPTIONS/1128. Miscellaneous exceptions.

**1128. Miscellaneous exceptions.**

The stamp duty reserve tax charge in respect of agreements to transfer chargeable securities between A and B[1] does not apply as regards an agreement:

380 (1) to transfer securities constituted by or transferable by means of (a) an overseas bearer instrument[2] or an inland bearer instrument[3] which does not fall within the statutory exemption[4] from stamp duty on bearer instruments for renounceable letters of allotment, letters of rights or other similar instruments where the rights are renounceable not later than six months after issue[5];
381 (2) which forms part of an arrangement falling within the statutory provisions relating to depositary receipts[6] or clearance services[7];
382 (3) to transfer securities which the Commissioners of Inland Revenue are satisfied are held, when the agreement is made, by a person whose business is exclusively that of holding shares, stock or other marketable securities[8]:

43

70. (a) as nominee or agent for a person whose business is or includes the provision of clearance services for the purchase and sale of marketable securities; and
71. (b) for the purposes of such part of the business mentioned in head (a) above as consists of the provision of such clearance services (in a case where the business does not consist exclusively of that)[9];

44

383 (4) to transfer securities to a body of persons established for charitable purposes only[10], to the trustees of a trust so established, to the Trustees of the National Heritage Memorial Fund[11] or to the Historic Buildings and Monuments Commission for England[12].

The Treasury may make regulations[13] providing that the charge to stamp duty reserve tax is to be treated as not arising or, depending on the terms of the regulations, as reduced[14] with regard to any circumstances which:

384 (i) would otherwise give rise to a charge to stamp duty reserve tax[15];
385 (ii) involve (A) a prescribed[16] recognised investment exchange[17]; or (B) a prescribed recognised clearing house[18]; or (C) a member or nominee, or member or nominee of a prescribed description, of such an exchange; or (D) a nominee, or nominee of a prescribed description, of such a clearing house; or (E) a nominee, or nominee of a prescribed description, of a member of such an exchange[19]; and
386 (iii) are such as are prescribed[20].

By virtue of the regulations so made, no stamp duty reserve tax is chargeable as regards certain agreements to transfer securities involving members of the London International Financial Futures Exchange (LIFFE)[21] or certain transactions made on Tradepoint Investment Exchange[22].

1 Ie the charge under the Finance Act 1986 s 87 (as amended): see PARAS 1120-1121 ante. For the meaning of 'chargeable securities' see PARA 1124 ante.

2 Ie within the meaning of the Stamp Act 1891, s 1 Sch 1, 'Bearer Instrument' (as added and amended): see PARAS 1066-1067 ante.

3 Ie within the meaning of ibid Sch 1, 'Bearer Instrument' (as added and amended): see PARA 1066 ante.

4 Ie within ibid Sch 1, 'Bearer Instrument', Exemption 3 (as added): see PARA 1098 ante.

5 Finance Act 1986 s 90(3).

6 Ie within ibid s 93(1): see PARA 1122 ante.

7 Ibid s 90(4). The provision relating to clearance services referred to is s 96(1): see PARA 1123 ante.

8 For these purposes, 'marketable securities' is to be construed in accordance with the Stamp Act 1891 s 122(1) (see PARA 1029 note 5 ante): Finance Act 1986 s 90(6) (substituted by the Finance Act 1987 s 56, Sch 7 para 5).

9 See the Finance Act 1986 s 90(5), (6) (substituted by the Finance Act 1987 Sch 7 para 5).

10 As to the meaning of 'charitable purposes' see PARA 1093 note 3 ante.

11 As to the National Heritage Memorial Fund see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARAS 815-817.

12 Finance Act 1986 s 90(7) (added by the Finance Act 1987 Sch 7 para 6). The Finance Act 1986 s 90 (as amended) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

13 The Finance Act 1991 s 116(3) (making of regulations: see PARA 1102 note 1 ante) applies for these purposes: s 117(3).

14 Ibid s 117(2).

15 Ibid s 117(1)(a).

16 For the meaning of 'prescribed' see PARA 1102 note 4 ante (definition applied by virtue of ibid s 117(3)).

17 For the meaning of 'recognised investment exchange' see PARA 1102 note 5 ante (definition applied by virtue of ibid s 117(3)). LIFFE is prescribed for these purposes (see PARA 1102 note 5 ante) as is Tradepoint Financial Networks plc (see the Stamp Duty Reserve Tax (Tradepoint) Regulations 1995, SI 1995/2051, regs 2, 3(b)).

18 For the meaning of 'recognised clearing house' see PARA 1102 note 6 ante (definition applied by virtue of the Finance Act 1991 s 117(3)). The London Clearing House Limited is prescribed as a recognised clearing house for these purposes: see PARA 1102 note 6 ante.

19 Ibid s 117(1)(b). A member of LIFFE who is recognised as such by the board of directors and who buys and sells options to buy or sell equity securities is prescribed as a description of member for these purposes: see PARA 1102 note 7 ante.

20 Ibid s 117(1)(c). For the prescribed circumstances see the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992, SI 1992/570, reg 7.

21 See ibid reg 7.

22 Seee the Stamp Duty Reserve Tax (Tradepoint) Regulations 1995 reg 4.

## UPDATE

### 1125-1131 Exceptions and Exemptions

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

### 1128 Miscellaneous exceptions

TEXT AND NOTES--UK depositary interests in foreign securities are exempt: Stamp Duty Reserve Tax (UK Depositary Interests in Foreign Securities) Regulations 1999, SI 1999/2383 (amended by SI 2000/1871, SI 2001/3755, SI 2001/3629, SI 2001/3779, SI 2007/12, SI 2008/954). The Finance Act 1986 s 87 does not apply as regards an agreement to transfer any shares in a company which are held by the company (whether in accordance with the Companies Act 2006 s 724 (see COMPANIES vol 15 (2009) PARA 1251), or otherwise): Finance Act 1986 s 90(7A) (added by Finance Act 2003 Sch 40 para 3; and amended by SI 2009/1890).

Where, under an approved employee share ownership plan, partnership shares or dividend shares are transferred by the trustees to an employee, no ad valorem stamp duty is chargeable on any instrument by which the transfer is made; and no stamp duty reserve tax is chargeable on any agreement by the trustees to make the transfer: Finance Act 2001 s 95.

Following the transfer of the business of Tradepoint Financial Networks plc to virt-x Exchange Ltd, the Stamp Duty Reserve Tax (Tradepoint) Regulations 1995 have been amended, substituting 'virt-x Exchange Ltd' for 'Tradepoint Financial Networks plc': SI 1995/2051 (amended by SI 2001/2267, SI 2003/2078, SI 2008/914).

TEXT AND NOTE 2--Head (1)(a) now refers to a non-UK bearer instrument: Finance Act 1986 s 90(3) (amended by Finance Act 1999 Sch 16 para 6(2)). An instrument is a 'UK bearer instrument' or a 'non-UK bearer instrument' according to whether it is issued by or on behalf of a UK company or a non-UK company (see PARA 1065): Finance Act 1986 s 99(1A) (added by Finance Act 1999 Sch 16 para 9). Stamp Act 1891 Sch 1 replaced by Finance Act 1999 Sch 15.

TEXT AND NOTE 3--Finance Act 1986 s 90(3)(b) replaced. Stamp duty reserve tax (under the Finance Act 1986 s 87: see PARA 1120) is not chargeable in respect of an agreement to transfer chargeable securities constituted by or transferable by means of a UK bearer instrument (see TEXT AND NOTE 2), unless (1) the instrument falls within the exemption conferred by the Finance Act 1999 Sch 15 para 16 (see PARA 1098); or (2) the instrument was issued by a body corporate incorporated in the United Kingdom (other than a European company which has its registered office outside the United Kingdom following a transfer in accordance with EC Council Regulation 2157/2001, on the Statute for a European Company, art 8), stamp duty was not chargeable on its issue by virtue only of the exemption conferred by the 1999 Act Sch 15 para 17 (see PARA 1098) or corresponding Northern Ireland legislation, and it is not exempt; or (3) the instrument as issued by a body corporate incorporated in the United Kingdom, stamp duty was not chargeable on its issue by virtue only of the Finance Act 1986 s 79(2) (see PARA 1101) or of s 79 and the Finance Act 1999 Sch 15 para 17, the instrument is not exempt, and by virtue of the Finance Act 1986 s 79(5) or (6), stamp duty was not chargeable on its issue by virtue only of s 79(2) (see PARA 1101) or of s 79(2) and 1967 Act s 30, the instrument is not exempt, and by virtue of the Finance Act 1986 s 79(5) or (6), stamp duty would be chargeable on an instrument transferring the loan capital to which the instrument relates: 1986 Act s 90(3A)-(3C), (3E) (all added by Finance Act 1997 s 105(2); and amended by Finance Act 1999 Sch 16 para 6(3)-(6); 1986 Act s 90(3C), (3E) amended by Finance (No 2) Act 2005 s 58(2)). For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005. An instrument is exempt for the purposes of head (2) if the chargeable securities in question are, or a depositary receipt (see PARA 1122) for them is, listed on a recognised stock exchange (see INCOME TAXATION vol 23(1) (Reissue) PARA 512) and the agreement to transfer them is not made in contemplation of, or as part of an arrangement for, a take-over, as defined, of the body corporate which issued the

instrument. If the instrument is to be exempt for the purposes of head (3), the securities must additionally not carry any right of conversion into, or acquisition of, shares or other securities (within the Finance Act 1986 s 79(5)) by the exercise of which chargeable securities not listed on a recognised stock exchange may be obtained: s 90(3D), (3F) (both added by Finance Act 1997 s 105(2), (8); and amended by Finance Act 1999 s 120(2)). For the prospective repeal of these provisions from abolition day, see s 123(3) and PARAS 1004, 1005.

TEXT AND NOTES 8, 9--The reference is now to the business rather than the person: Finance Act 1986 s 90(5) (amended by Finance Act 1999 s 120(3)). For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

NOTE 20--1992 Regulations reg 7 revoked: SI 1997/2429. See now the Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (The London Stock Exchange) Regulations 2008, SI 2008/52.

TEXT AND NOTES 21, 22--The provisions relating to the London Clearing House Ltd and the London International Financial Futures Exchange are now contained in the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1997, SI 1997/2429, PARA 1102. For similar provisions relating to the named exchanges see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (OM London Exchange Limited) Regulations 1999, SI 1999/3262; Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Jiway Ltd) Regulations 2000, SI 2000/2995. Similar exemption is accorded to transactions involving members of The London Stock Exchange plc: see the Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (The London Stock Exchange) Regulations 2001, SI 2001/255. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 2004, SI 2004/3218, reg 3 prescribes LCH.Clearnet as a recognised clearing house. No charge to stamp duty or to stamp duty reserve tax arises where, as a result of the exercise of options or on the expiration of a futures contract, equities of a particular kind are transferred or issued or agreed to be transferred or issued to LCH.Clearnet or a person whose business is or includes holding such securities as a nominee for LCH.Clearnet: reg 4. Eurex Clearing AG is also prescribed as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Eurex Clearing AG) Regulations 2007, SI 2007/1097; and PARA 1102. Borse Berlin AG is also prescribed as a recognised investment exchange and LCH Clearnet Ltd as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 2008, SI 2008/2777; and PARA 1102.

Borse Berlin AG and PLUS Markets plc is also prescribed as a recognised investment exchanges and LCH Clearnet Ltd as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (No 2) Regulations 2008, SI 2008/3235; and PARA 1102. Euro Millennium Multilateral Trading Facility is also prescribed as a recognised investment exchange and SIX X-CLEAR AG as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 2009, SI 2009/35; and PARA 1102. SmartPool Multilateral Trading Facility is also prescribed as a recognised investment exchange and the European Central Counterparty Ltd as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 2) 2009, SI 2009/194; and PARA 1102. NYSE Arca Europe is prescribed as a recognised investment exchange, and EuroCCP as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 3) 2009, SI 2009/397; and PARA 1102. Block Board is prescribed as a recognised investment exchange, and EuroCCP as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment

Exchanges and Clearing Houses) Regulations (No 4) 2009, SI 2009/1115; and PARA 1102. Liquidnet H2O Multilateral Trading Facility is prescribed as a recognised investment exchange, and SIX X-CLEAR AG as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 5) 2009, SI 2009/1344; and PARA 1102. BATS Trading Ltd multilateral trading facility is prescribed as a recognised investment exchange and LCH Clearnet Ltd, SIX X-CLEAR AG, and European Multilateral Clearing Facility NV as recognised clearing houses: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 6) 2009, SI 2009/1462; and PARA 1102. Chi-X Europe Ltd and the European Multilateral Clearing Facility NV are prescribed as recognised investment exchanges and LCH.Clearnet Ltd, SIX X-CLEAR AG as recognised clearing houses: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 7) 2009, SI 2009/1601; and PARA 1102. Turquoise Services Ltd is prescribed as a recognised investment exchange and European Central Counterparty Ltd, LCH.Clearnet Ltd, and SIX X-CLEAR AG as recognised clearing houses: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 8) 2009, SI 2009/1827; and PARA 1102. LIFFE A&M is prescribed as a recognised investment exchange and LCH.Clearnet Ltd as a recognised clearing house: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 9) 2009, SI 2009/1828; and PARA 1102. NASDAQ OMX Europe Ltd is prescribed as a recognised investment exchange and European Multilateral Clearing Facility NV, and SIX X-CLEAR AG as recognised clearing houses: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 10) 2009, SI 2009/1831; and PARA 1102. The multilateral trading facility operated by Baikal Global Ltd is prescribed as a recognised investment exchange and Cassa di Compensazione e Garanzia SpA and the European Multilateral Clearing Facility NV as recognised clearing houses: see Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No 11) 2009, SI 2009/1832; and PARA 1102.

**UPDATE**

**1125-1131  Exceptions and Exemptions**

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(3) EXCEPTIONS AND EXEMPTIONS/1128A. Open-ended investment companies and individual pension accounts.

**1128A. Open-ended investment companies and individual pension accounts.**

Where there are two or more classes of share in an open-ended investment company[1], and the company's instrument of incorporation (1) provides that the shares of one or more of those classes ('the IPA classes') may only be held within an individual pension account[2]; and (2) does not make such provision in relation to shares of at least one other class, there is no charge to stamp duty reserve tax[3] on the surrender of a share of any of the IPA classes[4].

1 'Open-ended investment company' has the meaning given by the Income and Corporation Taxes Act 1988 s 468(10) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1203), read with s 468(11)-(18), as those provisions are added in relation to such companies by the Open-ended Investment Companies (Tax) Regulations 1997; and accordingly references in the Income and Corporation Taxes Act 1988 s 468(11)-(16) to the 'Tax Acts' must be construed as if they included references both to the enactments relating to stamp duty and the enactments relating to stamp duty reserve tax, and those enactments have effect accordingly: Finance Act 2001 s 94(3) (applying the Finance Act 1999 Sch 19 para 4(2), as modified by the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997, SI 1997/1156, reg 4A (added by SI 1999/3261). This definition is subject to amendment by regulations made by the Treasury under the Finance Act 1999 Sch 19 para 17 (amended by SI 1997/1156, SI 1999/3261). See also NOTE 3.

2 For the meaning of 'individual pension account' see PARA 1121A NOTE 8 (definition applied by the Finance Act 2001 s 94(3), (4).

3 Ie under the Finance Act 1999 Sch 19 Pt II (paras 2-9) (see PARA 1121A). References in the Finance Act 2001 s 94 to provisions of the Finance Act 1999 are references to those provisions as they have effect in relation to open-ended investment companies by virtue of regulations from time to time in force under the Finance Act 1995 s 152 (see PARA 1074): Finance Act 2001 s 94(2).

4 Ibid s 94(1).

**UPDATE**

**1125-1131 Exceptions and Exemptions**

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

**1129. Power to prescribe exemptions relating to stock exchange nominees.**

The Treasury may by regulations[1] provide:

387 (1) that where prescribed[2] circumstances which involve a stock exchange nominee[3] would otherwise give rise to two charges to stamp duty reserve tax[4], such one of the charges as may be prescribed is to be treated as not arising[5];

388 (2) that where prescribed circumstances which involve a stock exchange nominee would otherwise give rise to a charge to stamp duty reserve tax and a charge to stamp duty[6], the charge to stamp duty reserve tax is to be treated as not arising[7];

389 (3) that a provision of an Act by virtue of which there is no charge to stamp duty reserve tax is also to apply in prescribed circumstances which involve a stock exchange nominee[8];

390 (4) that a provision of an Act by virtue of which the rate at which stamp duty reserve tax is charged is less than it would otherwise be is also to apply in prescribed circumstances which involve a stock exchange nominee[9].

This power has not, however, been exercised[10].

1 The power to make regulations under the Finance Act 1989 s 176 (see the text and notes 2-9 infra) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 176(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS. At the date at which this volume states the law, no such regulations had been made. See also PARA 1104 note 1 ante.

2 'Prescribed' means prescribed by the regulations: ibid s 176(6)(a).

3 For these purposes, 'stock exchange nominee' means a person designated for the purposes of the Finance Act 1976 s 127(1) (as amended) (see PARA 1104 ante) as a nominee of the Stock Exchange by an order made by the Secretary of State under s 127(5) (as amended) (see PARA 1104 ante): Finance Act 1989 s 176(6)(b).

4 As to the charge to stamp duty reserve tax see PARA 1118 et seq ante.

5 Finance Act 1989 s 176(1).

6 As to stamp duty see PARA 1001 et seq ante.

7 Finance Act 1989 s 176(2).

8 Ibid s 176(3).

9 Ibid s 176(4). Section 176 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

10 See note 9 supra.

**UPDATE**

**1125-1131 Exceptions and Exemptions**

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

**1130. Exemptions from the higher rate charge in respect of depositary receipts.**

The higher rate charge ordinarily payable[1] in respect of depositary receipts does not apply:

391 (1) where securities are transferred to a company which falls within the first prescribed category for the purposes of the higher rate stamp duty charge relating to depositary receipts[2] and which is resident in the United Kingdom[3] from such a company which is so resident[4];

392 (2) in respect of a transfer, issue or appropriation of an inland bearer instrument[5] which does not fall within the exemption[6] from the stamp duty on bearer instruments which relates to renounceable instruments[7];

393 (3) in respect of an issue by a company ('company X') of securities in exchange for shares in another company ('company Y') where company X has control[8] of company Y or will have such control in consequence of the exchange or of an offer as a result of which the exchange is made[9];

394 (4) in respect of the issue of securities by certain designated[10] international organisations[11].

1 Ie the charge to stamp duty reserve tax under the Finance Act 1986 s 93: see PARA 1122 ante.

2 Ie a company which falls within ibid s 67(6): see PARA 1070 head (1) ante.

3 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

4 Finance Act 1986 s 95(1).

5 Ie an inland bearer instrument within the meaning of the Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' (as added and amended): see PARA 1066 ante.

6 Ie which does not fall within ibid Sch 1, 'Bearer Instrument', Exemption 3 (as added): see PARA 1098 ante.

7 Finance Act 1986 s 95(2).

8 For these purposes, company X has control of company Y if company X has power to control company Y's affairs by virtue of holding shares in, or possessing voting power in relation to, company Y or any other body corporate: ibid s 95(4).

9 Ibid s 95(3). Section 95 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

10 Ie organisations designated for the purposes of the Finance Act 1984 s 126(1) or by virtue of s 126(4) (as added): see PARAS 1098 head (6), 1100 notes 4-6 ante.

11 Ibid s 126(3)(d) (added by the Finance Act 1990 s 114(1)).

**UPDATE**

**1125-1131 Exceptions and Exemptions**

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

**1130 Exemption from the higher rate charge in respect of depositary receipts**

TEXT AND NOTES--There is no charge to tax under the Finance Act 1986 s 93 (see PARA 1122) in respect of the transfer, issue or appropriation of chargeable securities ('the new securities') issued by a company in place of existing securities of the same company ('the old securities') if the following conditions are met: (1) the old securities are held under a depositary receipt scheme (in accordance with s 95(5)); (2) (a) there was a charge to tax under s 93 in respect of the transfer, issue or appropriation of the old securities or of earlier securities in relation to which on a previous application of this provision those securities were the new securities, or there would have been such a charge if s 93 had then been in force; or (b) there would have been such a charge but for s 95(2) or (3); and (3) there is an arrangement under which (a) the new securities are transferred, issued or appropriated as mentioned in s 93(1)(b), and (b) the old securities are cancelled: s 95A(1)-(5) (added by Finance Act 1999 s 118(1)). This exception applies only to the extent that the value of the new securities immediately after their issue does not exceed the value of the old securities immediately before that issue: Finance Act 1986 s 95A(6) (as added). For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

TEXT AND NOTES 3, 4--Reference to residence in the United Kingdom removed: Finance Act 1986 s 95(1) (amended by the Finance Act 2000 s 134(3), Sch 40 Pt III).

TEXT AND NOTES 5-7--Replaced. Head (2) now refers to the transfer, issue or appropriation of a UK bearer instrument (see PARA 1128), except in the case of an instrument within the exemption conferred by the Finance Act 1999 Sch 15 para 16 (see PARA 1098) or an instrument within that conferred by Sch 15 para 17 which does not raise new capital and is not issued in exchange for an instrument raising new capital: Finance Act 1986 s 95(2) (substituted by the Finance Act 1999 Sch 16 para 7). For transitional arrangements for instruments issued between 30 January 1999 and 8 March 1999, see s 116, and for similar arrangements for instruments issued between 9 March 1999 and 30 September 1999, see s 117. For the prospective repeal of these provisions from abolition day, see s 123(3) and PARAS 1004, 1005.

TEXT AND NOTES 8, 9--The shares in company Y must be held under a depositary receipts scheme: Finance Act 1986 s 95(3) (amended by the Finance Act 1998 s 151(1)). For these purposes, shares are held under a depositary receipts scheme where, in pursuance of an arrangement, (1) a depositary receipt for chargeable securities has been, or is to be, issued by a person falling within the Finance Act 1986 s 93(2) (see PARA 1122) in respect of the shares in question or shares of the same kind and amount, and (2) the shares in question are held by that person, or by a person whose business is or includes holding chargeable securities as nominee or agent for that person, towards the eventual satisfaction of the entitlement of the receipt's holder to receive chargeable securities: s 95(5) (added by the Finance Act 1998 s 151(2)). Where an arrangement is entered into under which shares in a company (company X) are issued to persons in respect of their holding of shares in another company (company Y), and the latter shares are cancelled, the issue is treated for the purposes of TEXT head (3) as an issue by company X in exchange for the shares in company Y: Finance Act 1986 s 95(6) (added by the Finance Act 1998 s 151(2)). 'Depositary receipt for chargeable

securities' has the same meaning as in Finance Act 1986 s 93 (see s 94, PARA 1122 NOTE 2): s 95(7) (added by the Finance Act 1998 s 151(2)).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(3) EXCEPTIONS AND EXEMPTIONS/1131. Exemptions from the higher rate charge in respect of clearance services.

**1131. Exemptions from the higher rate charge in respect of clearance services.**

The higher rate charge ordinarily payable[1] in respect of clearance services does not apply:

395 (1) where securities are transferred to a company which falls within the first prescribed category for the purposes of the higher rate stamp duty charge relating to clearance services[2] and which is resident in the United Kingdom[3] from such a company which is so resident[4];
396 (2) in respect of a transfer effected by an instrument on which stamp duty is not chargeable by virtue of the statutory exemptions relating to transfers to stock exchange nominees[5] or recognised investment exchanges and clearing houses[6];
397 (3) in respect of a transfer or issue of an inland bearer instrument[7] which does not fall within the statutory exemption[8] from the stamp duty on bearer instruments which relates to renounceable instruments[9];
398 (4) in respect of an issue by a ('company X') of securities in exchange for shares in another company ('company Y') where company X has control[10] of company Y or will have such control in consequence of the exchange or of an offer as a result of which the exchange is made[11];
399 (5) in respect of the issue of securities by certain designated[12] international organisations[13].

1 Ie the charge to stamp duty reserve tax under the Finance Act 1986 s 96: see PARA 1123 ante.

2 Ie a company which falls within ibid s 70(6) (as amended): see PARA 1072 ante.

3 For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

4 Finance Act 1986 s 97(1).

5 Ie the Finance Act 1976 s 127(1) (as amended): see PARA 1104 ante.

6 Finance Act 1986 s 97(2). The exemptions relating to recognised investment exchanges and clearing houses are the provisions of s 84(2), (3): see PARA 1104 ante.

7 Ie within the meaning of the Stamp Act 1891 s 1, Sch 1, 'Bearer Instrument' (as added and amended): see PARA 1066 ante.

8 Ie within ibid Sch 1, 'Bearer Instrument', Exemption 3 (as added): see PARA 1098 ante.

9 Finance Act 1986 s 97(3).

10 For these purposes, company X has control of company Y if company X has power to control company Y's affairs by virtue of holding shares in, or possessing voting power in relation to, company Y or any other body corporate: ibid s 97(5).

11 Ibid s 97(4).

12 Ie organisations designated for the purposes of the Finance Act 1984 s 126(1) or by virtue of s 126(4) (as added): see PARAS 1098 head (6), 1100 notes 4-6 ante.

13 Ibid s 126(3)(d) (added by the Finance Act 1990 s 114(1)).

**UPDATE**

### 1125-1131 Exceptions and Exemptions

There is no charge to stamp duty reserve tax on surrenders of shares in open-ended investment companies where the shares are in a share class which is restricted to holdings within individual pension accounts: see the Finance Act s 94; and PARA 1128A.

### 1131 Exemption from the higher rate charge in respect of clearance services

TEXT AND NOTES--There is no charge to tax under the Finance Act 1986 s 96 (see PARA 1123) in respect of the transfer or issue of chargeable securities ('the new securities') issued by a company in place of existing securities of the same company ('the old securities') if the following conditions are met: (1) the old securities are held under a clearance services scheme (in accordance with s 97(6)); (2)(a) there was a charge to tax under s 96 in respect of the transfer or issue of the old securities or of earlier securities in relation to which on a previous application of this provision those securities were the new securities, or there would have been such a charge if s 96 had then been in force; or (b) there would have been such a charge but for s 97(3) or (4); and (3) there is an arrangement under which (a) the new securities are transferred or issued as mentioned in s 96(1)(b), and (b) the old securities are cancelled: s 97AA(1)-(4) (added by the Finance Act 1999 s 118(2)). This exception applies only to the extent that the value of the new securities immediately after their issue does not exceed the value of the old securities immediately before that issue: 1986 Act s 97AA(6) (as added). For the prospective repeal of these provisions from abolition day, see the Finance Act 1999 s 123(3); and PARAS 1004, 1005.

TEXT AND NOTES 3, 4--Reference to residence in the United Kingdom removed: Finance Act 1986 s 97(1) (amended by the Finance Act 2000 s 134(3), Sch 40 Pt III).

TEXT AND NOTES 5, 6--Head (2) repealed: Finance Act 1996 s 196(4).

TEXT AND NOTES 7-9--Replaced. Head (3) now refers to the transfer or issue of a UK bearer instrument (see PARA 1128), except in the case of an instrument within the exemption conferred by the Finance Act 1999 Sch 15 para 16 (see PARA 1098) or an instrument within the exemption conferred by Sch 15 para 17 which does not raise new capital and is not issued in exchange for an instrument raising new capital: Finance Act 1986 s 97(3) (substituted by the Finance Act 1999 Sch 16 para 8). For transitional arrangements for instruments issued between 30 January 1999 and 8 March 1999, see s 116, and for similar arrangements for instruments issued between 9 March 1999 and 30 September 1999, see s 117. For the prospective repeal of these provisions from abolition day, see s 123(3); and PARAS 1004, 1005.

TEXT AND NOTES 10, 11--The shares in company Y must be held under a clearance services scheme: Finance Act 1986 s 97(4) (amended by the Finance Act 1998 s 151(3)). For these purposes, shares are held under a clearance services scheme where an arrangement falling within the Finance Act 1986 s 96(1)(a) (see PARA 1123) has been entered into, and in pursuance of that arrangement, the shares are held by the person referred to in that provision as A, or by a person whose business is or includes holding chargeable securities as nominee for that person: s 97(6) (added by Finance Act 1998 s 151(4)). Where an arrangement is entered into under which shares in a company (company X) are issued to persons in respect of their holding of shares in another company (company Y), and the latter shares are cancelled, the issue is treated for the purposes of TEXT head (4) as an issue by company X in exchange for the shares in company Y: Finance Act 1986 s 97(7) (added by Finance Act 1998 s 151(4)).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(4) ACCOUNTABILITY, DETERMINATION AND PAYMENT/1132. Payment of stamp duty reserve tax.

## (4) ACCOUNTABILITY, DETERMINATION AND PAYMENT

### 1132. Payment of stamp duty reserve tax.

Stamp duty reserve tax is due and payable on the accountable date[1].

Except where different arrangements are authorised in writing by the Commissioners of Inland Revenue, an accountable person[2] must, on or before the accountable date, give notice[3] of each charge to tax to the commissioners and pay the tax due[4]. If the accountable person does not give a notice of charge, or fraudulently or negligently gives an incorrect notice, or fails to correct an error which comes to his attention after he gave the notice, then penalties may be imposed on him[5].

1 Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 3. 'Accountable date' means (1) in relation to a charge under the Finance Act 1986 s 87 (as amended) (agreements to transfer chargeable securities: see PARAS 1120-1121 ante) the last day of the month following that in which it was incurred; (2) in relation to a charge under s 93 (depositary receipts: see PARA 1122 ante) and under s 96 (clearance services: see PARA 1123 ante), the last day of the second month following that in which it was incurred: Stamp Duty Reserve Tax Regulations 1986 reg 2.

2 For the meaning of 'accountable person' see PARA 1133 post.

3 Such a notice must be in writing and in such form as the commissioners may prescribe or authorise and must contain such information as they may reasonably require for the purposes of the Finance Act 1986 Pt IV (ss 86-99) (as amended) (see PARA 1118 et seq ante): Stamp Duty Reserve Tax Regulations 1986 regs 2, 4(2).

4 Ibid reg 4(1). Notice and payment of a charge to stamp duty reserve tax should be made to the Stamp Office: see the Press Release issued by the Office of the Controller of Stamps in February 1990.

5 By virtue of the Stamp Duty Reserve Tax Regulations 1986 reg 20, Schedule Pt I (amended by SI 1988/835; SI 1989/1301; SI 1991/724; SI 1993/3110; and SI 1994/1813), the following provisions of the Taxes Management Act 1970 apply, with certain modifications, to a failure to give correct notice of charge to stamp duty reserve tax: (1) s 93 (amended for these purposes by the Stamp Duty Reserve Tax (Amendment) Regulations 1993, SI 1993/3110, regs 1, 2, 7) (failure to give notice for stamp duty reserve tax); (2) the Taxes Management Act 1970 ss 95, 97 (incorrect notice); (3) s 99 (substituted for these purposes by the Stamp Duty Reserve Tax (Amendment) Regulations 1993 regs 1, 2, 7) (assisting in giving incorrect notice); (4) the Taxes Management Act 1970 ss 100-100D, 103 (as so substituted) and ss 101, 102, 104, 105 (determination of penalties, mitigation and appeal); (5) s 108 (responsibility of company officers); and (6) s 118(2) (no failure if reasonable excuse). These provisions as modified and applied are restated in the Stamp Duty Reserve Tax Regulations 1986 Schedule Pt II (as so amended). Amendments to the Taxes Management Act 1970 by enactments not relating to stamp duty reserve tax are not noted in heads (1)-(6) supra; nor are the specific modifications made by the Stamp Duty Reserve Tax Regulations 1986 reg 20, Schedule (as so amended). The Inland Revenue Regulation Act 1890 ss 21, 22, 35 (as amended) (proceedings for fine etc) do not apply to stamp duty reserve tax: Stamp Duty Reserve Tax Regulations 1986 reg 21.

### UPDATE

### 1132 Payment of stamp duty reserve tax

TEXT AND NOTES--An operator (see NOTE 1), except where different arrangements are authorised by the Commissioners of Inland Revenue must, on or before the accountable date (see NOTE 1) (1) give notice (in such form as they may prescribe and containing such information as they may reasonably require) to the commissioners of

each charge to tax arising (a) in respect of a relevant transaction in connection with which securities are transferred by means of a relevant system operated by him, (b) in respect of a relevant transaction that is reported to the Financial Services Authority or an exchange by means of a relevant system operated by him, or (c) in respect of a relevant transaction that is reported otherwise than by means of a relevant system to an exchange in relation to which he is the operator or (as the case may be) which itself is the operator, in a case where the securities to which the transaction relates are not transferred by means of a relevant system; and (2) pay the tax due: SI 1986/1711 reg 4A (added by SI 1997/2430; and amended by SI 2001/3629).

NOTE 1--Replaced. 'Accountable date' now means (1) in relation to a relevant transaction (see PARA 1135) (a) in connection with which securities are transferred by means of a relevant system operated by the operator of that system, (b) which is reported by means of a relevant system to the Financial Services Authority or an exchange by the operator of that system to the Financial Services Authority or an exchange by the operator of that system in a case where the securities to which the transaction relates are not transferred by means of a relevant system, or (c) which is reported, otherwise than by means of a relevant system, to an exchange, in a case where the securities to which the transaction relates are not transferred by means of a relevant system; the date agreed between the Commissioners and the operator or, if no such date is agreed, the date which is the fourteenth day following the date of the relevant transaction; (2) in relation to interest on overdue tax arising in connection with a relevant transaction which, by virtue of a party to that transaction being a participant in a relevant system, or a member of an exchange, could have been, but was not, reported to the Financial Services Authority or an exchange by means of that system, or to an exchange otherwise than by means of a relevant system, the date which is the fourteenth day following the date of the relevant transaction; (3) in relation to any other relevant transaction, the date which is the seventh day of the month following the month in which the charge to tax occasioned by the relevant transaction is incurred; and (4) in relation to a surrender, the date which is the fourteenth day of the month following the month in which the relevant two week period (see PARA 1121A) ends: SI 1986/1711 reg 2 (substituted by SI 1997/2430; and amended by SI 1999/3264, SI 2001/3629, SI 2001/3755). 'Operator' means (i) a person approved by the Treasury under the Uncertificated Securities Regulations 2001 as Operator of a relevant system; (ii) where a relevant transaction is reported to an exchange otherwise than by means of a relevant system, the operator of that exchange or, if there is no such operator, that exchange; (iii) where a relevant transaction is reported to more than one exchange otherwise than by means of a relevant system, the operator of the exchange of which the party who is the accountable person (see PARA 1133) in relation to that transaction is a member or, if there is no such operator, that exchange. 'Exchange' is a recognised investment exchange within the meaning of the Financial Services and Markets Act 2000 s 285(1)(a) or an EEA regulated market of a kind described in the Financial Services and Markets Act 2000 (Exemption) Order 2001, SI 2001/544, Sch Pt III para 36(2): SI 1986/1711 reg 2 (amended by SI 1997/2430, SI 2001/3629).

TEXT AND NOTE 2--This requirement does not apply where the tax has been accounted for by the operator under SI 1986/1711 reg 4A (see TEXT AND NOTES): reg 4(1) (amended by SI 1997/2430).

NOTE 3--SI 1986/1711 reg 4 does not apply where the tax in question has been accounted for by the operator under reg 4A, or where reg 4B applies to the accountable person. An accountable person in relation to a charge to tax on a surrender must, on or before the accounting date, give notice to the Board detailing all surrenders for which the relevant two week period ends in the month preceding that in which the accountable date falls; setting out the total of any reductions under the

Finance Act 1999 Sch 19 paras 4, 5 of the amounts of tax chargeable on those surrenders; identifying those surrenders to which Sch 19 para 6 or 7 applies (see PARA 1121A); and stating the total amount of tax due and payable. He must also pay the tax: SI 1986/1711 reg 4B (added by SI 1999/3264).

NOTE 5--SI 1986/1711 Schedule Pts I, II further amended: SI 1997/2430, SI 1999/2536, SI 1999/3264, SI 2001/3629. Inland Revenue Regulation Act 1890 repealed: Commissioners for Revenue and Customs Act 2005 Sch 4 para 5, Sch 5.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(4) ACCOUNTABILITY, DETERMINATION AND PAYMENT/1133. Meaning of 'accountable person'.

**1133. Meaning of 'accountable person'.**

The accountable person for the purposes of stamp duty reserve tax is the person prescribed in relation to the charge in question[1]. In relation to a charge:

400 (1) in respect of agreements to transfer chargeable securities between A and B[2], the accountable person may be the market maker[3], the broker and dealer[4], the qualified dealer[5] or, in certain circumstances, the person mentioned as B in the relevant statutory provisions[6];

401 (2) under the provisions relating to depositary receipts[7], the accountable person is the person who has issued or is to issue the depositary receipt[8] or, where that person is not resident in the United Kingdom[9] and has no branch or office in the United Kingdom at the time when the securities in question are transferred, the person to whom they are transferred[10];

402 (3) relating to depositary receipts where chargeable securities are issued or transferred on sale under terms providing for payment in instalments and for an issue of other chargeable securities[11], and which becomes due when an instalment is payable, the accountable person is the person liable to pay the instalment[12];

403 (4) under the provisions relating to clearance services[13], the accountable person is the person referred to as A[14] or, where that person is not resident in the United Kingdom[15] and has no branch or office in the United Kingdom at the time when the securities in question are transferred, the person to whom they are transferred[16]; and

404 (5) relating to clearance services where chargeable securities are issued or transferred on sale under terms providing for payment in instalments and for an issue of other chargeable securities[17], and which becomes due when an instalment is payable, the accountable person is the person liable to pay the instalment[18].

1 See the Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 2 (as amended); and the text and notes 2-18 infra.

2 Ie under the Finance Act 1986 s 87 (as amended): see PARAS 1120-1121 ante.

3 'Market maker' has the same meaning for these purposes as it has for the time being for the purposes of the Finance Act 1986 s 89 (as amended) (see PARA 1125 note 2 ante): Stamp Duty Reserve Tax Regulations 1986 reg 2 (definition added by SI 1988/835).

4 'Broker and dealer' has the same meaning for these purposes as it has for the time being for the purposes of the Finance Act 1986 s 89 (as amended) (see PARA 1125 note 5 ante): Stamp Duty Reserve Tax Regulations 1986 reg 2 (definition added by SI 1988/835).

5 For these purposes, 'qualified dealer' means a person who, not being a market maker or a broker and dealer, (1) is an authorised person under the Financial Services Act 1986 Pt I Ch III (ss 7-34); or (2) is to be treated as such a person by virtue of s 211(3), Sch 15 para 1; or (3) is a European institution which carries on investment business in the United Kingdom: Stamp Duty Reserve Tax Regulations 1986 reg 2 (definition added by SI 1988/835; amended by SI 1992/3287). 'European institution' has the meaning given by the Banking Co-ordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 3; and 'investment business' has the meaning given by the Financial Services Act 1986 s 1(2): Stamp Duty Reserve Tax Regulations 1986 reg 2 (definitions added by SI 1992/3287). For the meaning of 'United Kingdom' see PARA 1007 note 6 ante.

6 See ibid reg 2 (definition substituted for these purposes by SI 1988/835). In relation to such a charge: (1) if the person mentioned as B in the Finance Act 1986 s 87(1) is a market maker or broker and dealer, or if a

broker and dealer is acting as an agent for B who is not a market maker or broker and dealer, then the market maker or broker and dealer is the accountable person; and failing that, (2) if the person mentioned as A in s 87(1) is a market maker or broker and dealer, or if a broker and dealer is acting as an agent for A who is not a market maker or broker and dealer, the market maker or broker and dealer is the accountable person; and failing that (3) if the person mentioned as B in s 87(1) is a qualified dealer, or if a qualified dealer is acting as an agent for B who is not a qualified dealer, the qualified dealer is the accountable person; and failing that (4) if the person mentioned as A in s 87(1) is a qualified dealer, or if a qualified dealer is acting as an agent for A who is not a qualified dealer, the qualified dealer is the accountable person; and failing that (5) the person mentioned as B in s 87(1) is the accountable person: Stamp Duty Reserve Tax Regulations 1986 reg 2 (definition as so substituted).

7 Ie under the Finance Act 1986 s 93(1)-(7): see PARA 1122 ante.

8 Ie the person mentioned in ibid s 93(8): see PARA 1122 ante. For the meaning of 'depositary receipt' see PARA 1122 note 2 ante.

9 Ie where ibid s 93(9) is applicable: see PARA 1122 ante.

10 Stamp Duty Reserve Tax Regulations 1986 reg 2, applying the Finance Act 1986 s 93(8), (9).

11 Ie a charge under ibid s 93(10): see PARA 1122 ante.

12 Stamp Duty Reserve Tax Regulations 1986 reg 2.

13 Ie under the Finance Act 1986 s 96(1)-(5): see PARA 1123 ante.

14 Ie the person mentioned in ibid s 96(6): see PARA 1123 ante.

15 Ie where ibid s 96(7) is applicable: see PARA 1123 ante.

16 Stamp Duty Reserve Tax Regulations 1986 reg 2, applying the Finance Act 1986 s 96(6), (7).

17 Ie a charge under ibid s 96(8): see PARA 1123 ante.

18 Stamp Duty Reserve Tax Regulations 1986 reg 2.

## UPDATE

### 1133 Meaning of 'accountable person'

TEXT AND NOTES--The term also includes (6) in relation to a charge on the surrender of a unit under the Finance Act 1999 Sch 19 para 2(1) (see PARA 1121A), the managers of the unit trust scheme and, failing that, the trustees of the unit trust scheme; (7) in relation to a charge on the surrender of a share in an open-ended investment company under Sch 19 para 2(1), the authorised corporate director of the company and, failing that, the company: SI 1986/1711 reg 2 (amended by SI 1999/3264).

For the meaning of 'surrender' and 'unit trust scheme' and related expressions, see PARA 1121A. 'Open-ended investment company' has the same meaning as in the Financial Services and Markets Act 2000 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603).

NOTES 3, 4--Definitions revoked: SI 1997/2430.

NOTES 5, 6 --'Member of an exchange' substituted for 'market maker or broker and dealer' and 'broker and dealer' as appropriate: SI 1986/1711 reg 2 (amended by SI 1997/2430). 'Qualified dealer' now means a person who, not being a member of an exchange (1) is a person who has permission under the Financial Services and Markets Act 2000 Pt 4 (ss 40-55) to carry on investment business, or (2) is authorised under a legislative provision of the government of a territory outside the United Kingdom to carry on investment business, or (3) while not required to be authorised to do so, carries on investment business: SI 1986/1711 reg 2 (amended by SI 1997/2430, SI 2001/3629). 'Investment business' is now defined as business which consists of the

carrying on of one or more of the activities specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, arts 14, 21, 25, 37, 40, 45, 51 and 53 and, in so far as it applies to any of those articles, art 64: SI 1986/1711 reg 2 (amended by SI 2001/3629). Definition of 'European institution' revoked: SI 2001/3629.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(4) ACCOUNTABILITY, DETERMINATION AND PAYMENT/1134. Relief from accountability.

**1134. Relief from accountability.**

If in respect of an agreement to transfer chargeable securities between A and B[1] an accountable person[2] who is not B and who is not therefore liable to stamp duty reserve tax[3] receives a claim in relation to a charge to that tax, and proves to the satisfaction of the Commissioners of Inland Revenue that he has taken without success all reasonable steps, both before and after the date of the agreement, to recover, from the person liable, the tax for which he is accountable[4], he is relieved of his liability to account for and pay that tax and any interest on it[5].

1 Ie an agreement chargeable under the Finance Act 1986 s 87 (as amended): see PARAS 1120-1121 ante.

2 For the meaning of 'accountable person' see PARA 1133 ante.

3 Ie is not liable under the Finance Act 1986 s 91(1): see PARAS 1120-1121 ante.

4 Ie accountable under the Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 4: see PARA 1132 ante.

5 Ibid reg 7.

**UPDATE**

**1134 Relief from accountability**

TEXT AND NOTES--These provisions now apply to the receipt of a claim (1) in respect of an agreement to transfer chargeable securities between A and B an accountable person or an operator (see PARA 1132) who is not B and who is not therefore liable to stamp duty reserve tax, or (2) in respect of a surrender of a unit to the managers of a unit trust scheme (see PARA 1121A), a person other than the trustees of that trust (who is similarly not liable to stamp duty reserve tax): SI 1986/1711 reg 7 (amended by SI 1999/3264).

NOTE 4--Now refers to SI 1986/1711 regs 4-4B: reg 7 (amended by SI 1997/2430, SI 1999/3264).

**1135. Notice of determination.**

Where it appears to the Commissioners of Inland Revenue that a relevant transaction[1] has taken place, or where a claim is made to the commissioners in connection with a relevant transaction, they may give notice[2] to any person who appears to them in relation to that transaction to be the accountable person[3], or the person liable for any of the stamp duty reserve tax charged or to the claimant, stating that they have determined the matters specified in the notice[4]. If it appears to the commissioners that any such matter specified in a notice of determination is, or may be, material as respects any liability to stamp duty reserve tax[5] of two or more persons, they may give notice of the determination to each of those persons[6]. Any matter that appears to the commissioners to be relevant for the purposes of the tax may be determined and specified in a notice under these provisions[7].

A determination for the purposes of a notice under these provisions of any fact relating to a relevant transaction must, if that fact has been stated in a notice[8] of charge and the commissioners are satisfied that the notice is correct, be made by the commissioners in accordance with that notice, but in any other case may be made by the commissioners to the best of their judgment[9].

Subject to any variation by agreement in writing or on appeal, a determination in a notice under these provisions is conclusive for the purposes of Part IV of the Finance Act 1986[10] against a person on whom the notice is served[11].

1 'Relevant transaction' means (1) an agreement falling within the Finance Act 1986 s 87(1) (see PARAS 1120-1121 ante); (2) a transfer, issue or appropriation falling within s 93(1)(b) (see PARA 1122 ante); or (3) a transfer or issue falling within s 96(1)(b) (see PARA 1123 ante), in respect of which there is a charge to stamp duty reserve tax: Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 2.

2 Such a notice must be in writing and must state the time within which and the manner in which an appeal against any determination in it may be made: ibid regs 2, 6(5).

3 For the meaning of 'accountable person' see PARA 1133 ante.

4 Stamp Duty Reserve Tax Regulations 1986 reg 6(1).

5 As to liability to stamp duty reserve tax see PARAS 1120-1123 ante.

6 Stamp Duty Reserve Tax Regulations 1986 reg 6(2).

7 Ibid reg 6(3).

8 Ie a notice under ibid reg 4: see PARA 1132 ante.

9 Ibid reg 6(4).

10 Ie the Finance Act 1986 Pt IV (ss 86-99) (as amended): see PARA 1118 et seq ante, 1137 post.

11 Stamp Duty Reserve Tax Regulations 1986 reg 6(6).

**UPDATE**

**1135 Notice of determination**

TEXT AND NOTES--These provisions are extended to surrenders (see PARA 1121A): SI 1986/1711 reg 6 (amended by SI 1999/3264).

TEXT AND NOTE 3--Notice may also be given, in appropriate cases, to the operator (see PARA 1132): SI 1986/1711 reg 6 (amended by SI 1997/2430).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(4) ACCOUNTABILITY, DETERMINATION AND PAYMENT/1136. Underpayments and overpayments.

**1136. Underpayments and overpayments.**

Where too little stamp duty reserve tax has been paid in respect of a relevant transaction[1], the tax underpaid is payable with interest, whether or not the amount that has been paid was that stated as payable in a notice[2] of charge[3].

Where tax is paid in accordance with a notice of charge given to the Commissioners of Inland Revenue and the payment is made and accepted in full satisfaction of the tax, no additional amount of tax may be determined and specified in a notice[4] of determination after the end of the period of six years beginning with the later of (1) the date on which the payment was made and accepted; and (2) the relevant accountable date[5]. At the end of that period, any liability for the additional tax is extinguished[6]. In any case of fraudulent or negligent conduct by or on behalf of any person in connection with or in relation to tax, the period of six years mentioned above begins when the fraudulent or negligent conduct comes to the knowledge of the commissioners[7].

If, on a claim[8] being made, it is proved to the commissioners' satisfaction that too much tax has been paid in respect of any relevant transaction, the excess (and any interest paid on it) must be repaid by the commissioners[9]. Where tax so repaid is not less than £25 it must be repaid with interest on it at the rate which is the appropriate rate[10] from the time it was paid[11].

Where an amount of tax has been repaid, or interest has been paid, to any person and that tax or interest ought not to have been repaid or paid, that amount may be determined and recovered as if it were tax due from him[12]. Such a determination may be made at any time before the expiration of six years from the date on which the amount was repaid or paid[13] or, in any case of fraudulent or negligent conduct, before the expiration of six years from the date on which the fraudulent or negligent conduct comes to the knowledge of the commissioners[14].

1 For the meaning of 'relevant transaction' see PARA 1135 note 1 ante.

2 Ie a notice under the Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 4: see PARA 1132 ante.

3 Ibid reg 13(1). As to evidence in proceedings for the recovery of tax and interest on tax see reg 16; and PARA 1140 post.

Where any payment has been made and accepted in satisfaction of any liability for tax and on a view of the law then generally received or adopted in practice, any question whether too little or too much has been paid or what was the right amount of tax payable is determined on the same view, notwithstanding that it appears from a subsequent legal decision or otherwise that the view was or may have been wrong: ibid reg 17.

4 Ie a notice under ibid reg 6: see PARA 1135 ante.

5 Ibid reg 13(2). For the meaning of 'accountable date' see PARA 1132 note 1 ante.

6 Ibid reg 13(2).

7 Ibid reg 13(3) (amended by SI 1993/3110).

8 Such a claim must be made within a period of six years beginning with the later of (1) the date on which the payment was made; and (2) the relevant accountable date: ibid reg 14(2).

9 Ibid reg 14(1). See also reg 17; cited in note 3 supra.

10 Ie the rate applicable under the Finance Act 1989 s 178 (as amended): Stamp Duty Reserve Tax Regulations 1986 reg 11(1) (amended by SI 1989/1301).

11 Ibid reg 11(1) (as amended: see note 10 supra). Interest so paid does not constitute income for the purposes of income tax or corporation tax: reg 11(2).

12 Ibid reg 18(1). For these purposes, an amount repaid or paid includes an amount allowed by way of set off: reg 18(4).

13 Ibid reg 18(2).

14 Ibid 18(3) (amended by SI 1993/3110).

### UPDATE

### 1136 Underpayments and overpayments

NOTES 1, 9--These provisions are extended to surrenders (see PARA 1121A): SI 1986/1711 regs 13, 14 (both amended by SI 1999/3264).

NOTE 2--Now refers to SI 1986/1711 regs 4-4B: reg 13 (amended by SI 1999/3264).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(4) ACCOUNTABILITY, DETERMINATION AND PAYMENT/1137. Repayment or cancellation of tax.

## 1137. Repayment or cancellation of tax.

If, as regards an agreement between A and B to transfer securities to B or his nominee, stamp duty reserve tax is charged[1] and it is proved to the satisfaction of the Commissioners of Inland Revenue that at a time after the expiry of the period of two months beginning with the relevant day[2] but before the expiry of the period of six years beginning with that day, the statutory conditions[3] for the relief of the charge have been fulfilled, the following provisions apply[4].

If any of the tax charged has been paid, and a claim for repayment is made within the period of six years previously referred to, the tax paid must be repaid; and where the tax paid is £25 or more it must be repaid with interest on it at the appropriate rate[5] from the date on which the payment was made until the order for repayment is issued[6]. To the extent that the tax charged has not been paid, the charge is cancelled[7].

1 Ie under the Finance Act 1986 s 87 (as amended): see PARAS 1120-1121 ante.

2 Ie the relevant day within the meaning of ibid s 87(3): see PARA 1120 note 5 ante.

3 Ie the conditions mentioned in ibid s 87(4), (5): see PARA 1120 ante.

4 Ibid s 92(1).

5 Ie the rate applicable under the Finance Act 1989 s 178 (as amended): Finance Act 1986 s 92(2) (amended by the Finance Act 1989 s 179(1)(f), (4)).

6 Finance Act 1986 s 92(2) (as amended: see note 5 supra; further amended by the Finance Act 1989 s 180(5), (7)). Interest paid under the Finance Act 1986 s 92(2) (as so amended) does not constitute income for any tax purposes: s 92(4A) (added by the Finance Act 1987 s 56, Sch 7 para 7).

7 Finance Act 1986 s 92(3). Section 92 (as amended) is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

### UPDATE

### 1137 Repayment or cancellation of tax

TEXT AND NOTES--The provisions also apply if, as regards an agreement to transfer shares in a company to that company ('the own-shares agreement') tax is charged under the Finance Act 1986 s 87 and it is proved to the satisfaction of the Board that at a time in the period of six years beginning on the relevant day (as defined in s 87(3)) (see PARA 1120 NOTE 5) the following conditions have been fulfilled in respect of those shares: (1) that, in relation to the transfer made in pursuance of the own-shares agreement, a return has been made in respect of each of those shares in accordance with the Companies Act 2006 s 707 (see COMPANIES vol 15 (2009) PARA 1241); and (2) that any such return has been duly stamped in accordance with the Finance Act 1986 s 66: s 92(1C), (1D) (added by Finance Act 2003 Sch 40 para 4; Finance Act 1986 s 92(1D) amended by SI 2009/1890). As to the Board, see INCOME TAXATION.

TEXT AND NOTE 2--For 'after the expiry ... relevant day' read 'on or after the relevant day': Finance Act 1986 s 92(1) (amended by Finance Act 1996 s 188(4), (5)).

NOTE 3--Now refers to conditions mentioned in the Finance Act 1986 s 92(1A), (1B): s 92(1) (amended by Finance Act 1996 s 192(3)) (see PARA 1120).

NOTE 6--Finance Act 1986 s 92(2) further amended: Finance Act 2003 Sch 40 para 4.

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(5) ADMINISTRATION/1138. Management.

## (5) ADMINISTRATION

### 1138. Management.

Stamp duty reserve tax is under the care and management of the Commissioners of Inland Revenue and is administered by the Stamp Office[1].

The Treasury may make regulations[2]:

405 (1) providing that provisions of the Taxes Management Act 1970 specified in the regulations are to apply in relation to stamp duty reserve tax as they apply in relation to a tax within the meaning of that Act, with such modifications specified in the regulations as the Treasury thinks fit[3];

406 (2) making with regard to stamp duty reserve tax such further provision as the Treasury thinks fit in relation to administration, assessment, collection and recovery[4].

Regulations so made may include provision that notice which they require to be given to the commissioners, or information which they require to be supplied to the commissioners, is to be given or supplied in a manner or form specified by the commissioners[5].

The commissioners may by notice[6] require any person to furnish them within such time, not being less than 30 days, as may be specified in the notice with such information (including documents or records) as they may reasonably require for the purposes[7] of stamp duty reserve tax[8]. A barrister or solicitor is not, however, obliged in pursuance of such a notice to disclose, without his client's consent, any information with respect to which a claim to professional privilege could be maintained[9].

1 See PARA 1118 ante. As to specific provisions governing administration and collection of the tax see PARA 1118 note 12 ante. As to the obligation to give notice of each charge to tax and pay the tax due see PARA 1132 ante.

2 The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: Finance Act 1986 s 98(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ibid s 98(1)(a). As to the provisions so modified and applied see note 8 infra.

4 Ibid s 98(1)(b). In exercise of the power so conferred, the Treasury has made the Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711 (amended by SI 1988/835; SI 1989/1301; SI 1991/724; SI 1992/3287; SI 1993/3110; and SI 1994/1813), which came into operation on 27 October 1986: see reg 1. See further the text and notes 5-9 infra; and PARAS 1132-1136 ante, 1139-1142 post. The Finance Act 1986 s 98 is prospectively repealed by the Finance Act 1990 s 132, Sch 19 Pt VII as from the abolition day; and the Stamp Duty Reserve Tax Regulations 1986 (as so amended) are thus prospectively revoked as from that day. For the meaning of 'the abolition day' see PARA 1119 note 3 ante. At the date at which this volume states the law, no such day had been appointed.

5 Finance Act 1989 s 177. Section 177 is prospectively repealed by the Finance Act 1990 Sch 19 Pt VII as from the abolition day.

6 The notice must be in writing: Stamp Duty Reserve Tax Regulations 1986 reg 2.

7 Ie for the purposes of the Finance Act 1986 Pt IV (ss 86-99) (as amended): see PARA 1118 et seq ante.

8 Stamp Duty Reserve Tax Regulations 1986 reg 5(1). By virtue of reg 20, Schedule Pt I (amended by SI 1988/835; SI 1989/1301; SI 1991/724; SI 1993/3110; and SI 1994/1813), the following provisions of the Taxes Management Act 1970 apply, with certain modifications, to stamp duty reserve tax:

11 (1) s 23, under which the Commissioners of Inland Revenue have power to obtain copies of registers of securities (see INCOME TAXATION vol 23(2) (Reissue) PARA 1709);

12 (2) s 25, under which an inspector of taxes may in prescribed circumstances require returns by issuing houses, stockbrokers, etc;

13 (3) s 26, under which the commissioners may obtain information from nominee shareholders;

14 (4) s 98 (substituted for these purposes by the Stamp Duty Reserve Tax (Amendment) Regulations 1993, SI 1993/3110, regs 1, 2, 7; amended by the General and Special Commissioners (Amendment of Enactments) Regulations 1994, SI 1994/1813, reg 2(1), Sch 1 para 31(4) and applied except in relation to the Stamp Duty Reserve Tax Regulations 1986 reg 4: see PARA 1132 ante); and the Taxes Management Act 1970 ss 100-105 (as amended: see PARA 1132 note 5 ante), concerning penalties for non-compliance with notices etc of determination, mitigation and appeal;

15 (5) s 108, concerning the responsibilities of company officers (see INCOME TAXATION vol 23(1) (Reissue) PARA 844);

16 (6) s 111 (valuation of assets and power of inspection);

17 (7) s 114, which describes the circumstances in which a want of form in a document purporting to be made in pursuance of provisions of the Taxes Acts will not cause that document to be quashed or deemed to be void or voidable (for an instance of the operation of s 114 (as amended) see INCOME TAXATION vol 23(1) (Reissue) PARA 538; INCOME TAXATION vol 23(2) (Reissue) PARA 1736);

18 (8) s 118(2), which describes the circumstances in which a person is deemed not to have failed to do what ordinarily he ought to have done (see INCOME TAXATION vol 23(2) (Reissue) PARA 1690).

These provisions, as modified and applied, are restated in the Stamp Duty Reserve Tax Regulations 1986 Schedule Pt II (as so amended). As to the provisions applicable in respect of a failure to give notice of charge see PARA 1132 ante. Amendments to the Taxes Management Act 1970 by enactments not relating to stamp duty reserve tax are not noted in heads (1)-(8) supra; nor are the specific modifications made by the Stamp Duty Reserve Tax Regulations 1986 reg 20, Schedule (as so amended).

9 Ibid reg 5(2).

## UPDATE

## 1138 Management

TEXT AND NOTES--The provisions of regulations made under the Finance Act 1986 s 98, and the provisions of the Taxes Management Act 1970 (see INCOME TAXATION) applied by such regulations, have effect with the necessary modifications in relation to (1) the determination by the Commissioners of the duty payable under the Finance Act 2002 s 111 or Sch 34 (see PARA 1090A) or s 113 or Sch 35 (see PARA 1092B) or the interest payable thereon; (2) appeals against any such determination; and (3) the collection and recovery of such interest, as if it were an amount of stamp duty reserve tax: Sch 34 para 7, Sch 35 para 8.

TEXT AND NOTES 2-5--The Treasury's power to make regulations includes power to make provision conferring or imposing on the Commissioners functions which involve the exercise of a discretion: Finance Act 1986 s 98(1A) (added by Finance Act 1996 s 195).

TEXT AND NOTES 2-4--See also the Finance Act 1999 s 121. As to the prospective repeal of s 121 from abolition day, see s 123(3) and PARAS 1004, 1005.

NOTE 4--SI 1986/1711 further amended: SI 1997/2430, SI 1999/2536, SI 1999/3264, SI 2009/1307. The Treasury has also made the Stamp Duty Reserve Tax (UK Depositary Interests in Foreign Securities) Regulations 1999, SI 1999/2383 (see PARA 1128).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(5) ADMINISTRATION/1139. Inspection of records.

**1139. Inspection of records.**

Every accountable person[1] must, whenever required to do so, make available for inspection by an officer of the Commissioners of Inland Revenue authorised for that purpose all books, documents and other records in his possession or under his control containing information relating to any relevant transaction[2] to which he was a party or in connection with which he acted[3]. Where records are maintained by computer, the person required to make them available for inspection must provide the officer making the inspection with all facilities necessary for obtaining information from them[4].

1 For the meaning of 'accountable person' see PARA 1133 ante.

2 For the meaning of 'relevant transaction' see PARA 1135 note 1 ante.

3 Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 15(1).

4 Ibid reg 15(2).

**UPDATE**

**1139 Inspection of records**

TEXT AND NOTES--This provision now extends to an operator (see PARA 1132), who must comply wherever required to do so: SI 1986/1711 reg 15 (amended by SI 1997/2430).

Halsbury's Laws of England/STAMP DUTIES AND STAMP DUTY RESERVE TAX (VOLUME 44(1) (REISSUE))/2. STAMP DUTY RESERVE TAX/(5) ADMINISTRATION/1140. Recovery of tax.

**1140. Recovery of tax.**

The Commissioners of Inland Revenue must not exercise any remedy or take any proceedings for the recovery of any amount of stamp duty reserve tax which is due from any person unless the amount has been agreed in writing between that person and the commissioners or has been determined and specified in a notice[1] of determination[2]. Where an amount has been so determined and specified, but an appeal[3] is pending against the determination, the commissioners must not exercise any remedy or take any legal proceedings to recover the amount determined except such part of it as may be agreed in writing or determined and specified in a further notice of determination to be a part not in dispute[4].

For the purposes of the relevant regulations[5], a notice[6] specifying any determination which can no longer be varied or quashed on appeal is sufficient evidence of the matters specified[7]. In any proceedings for the recovery of tax or interest on tax, a certificate by an officer of the commissioners that the tax or interest is due and that, to the best of his knowledge and belief, it has not been paid, is sufficient evidence that the sum mentioned in the certificate is due or, as the case may be, unpaid[8].

The collection and recovery provisions of the Taxes Management Act 1970 apply, with certain modifications, to stamp duty reserve tax[9].

1 Ie a notice under the Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 6: see PARA 1135 ante.

2 Ibid reg 12(1).

3 Ie an appeal under ibid reg 8 (as amended) (see PARA 1142 post) but not any further appeal: reg 12(3). Regulation 8 (as amended) applies to a determination made in pursuance of reg 12(2) as if reg 8(4)-(4B) (as substituted and added) (appeals and references to the Lands Tribunal) were omitted: reg 12(3) (amended by SI 1993/3110).

4 Ibid reg 12(2).

5 Ie ibid regs 2-15 (as amended): see PARA 1132 et seq ante.

6 See note 1 supra.

7 Stamp Duty Reserve Tax Regulations 1986 reg 16(1).

8 Ibid reg 16(2). A document purporting to be such a certificate is deemed to be such a certificate unless the contrary is proved: reg 16(2).

9 By virtue of ibid reg 20, Schedule Pt I (amended by SI 1988/835; SI 1989/1301; SI 1991/724; SI 1993/3110; and SI 1994/1813), the following provisions of the Taxes Management Act 1970 apply, with certain modifications, to stamp duty reserve tax:

19 (1) s 60 (added for these purposes by the Stamp Duty Reserve Tax (Amendment) Regulations 1993, SI 1993/3110, regs 1, 2, 8); the Taxes Management Act 1970 s 61; s 65 (amended for these purposes by the Stamp Duty Reserve Tax (Amendment) Regulations 1993 regs 1, 2, 8); the Taxes Management Act 1970 s 66 (amended for these purposes by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724; and by the Stamp Duty Reserve Tax (Amendment) Regulations 1993 regs 1, 2, 7); and the Taxes Management Act 1970 ss 68, 69 (collection and recovery);

20 (2) ss 71-74 (persons chargeable in a representative capacity);

21 (3) ss 78, 83 (charges on non-residents); and

22 (4) s 86 (amended for these purpose by the Stamp Duty Reserve Tax (Amendment) Regulations 1989, SI 1989/1301, reg 5(a)); and the Taxes Management Act 1970 s 90 (interest on overdue tax).

These provisions, as modified and applied, are restated in the Stamp Duty Reserve Tax Regulations 1986 Schedule Pt II (as so amended). As to penalties see PARAS 1132 note 5, 1138 note 1 ante. Amendments to the Taxes Management Act 1970 by enactments not relating to stamp duty reserve tax are not noted in heads (1)-(4) supra; nor are the specific modifications made by the Stamp Duty Reserve Tax Regulations 1986 reg 20, Schedule (as so amended).

## UPDATE

## 1140 Recovery of tax

NOTE 9--SI 1986/1711 Schedule Pts I, II further amended: SI 1997/2430, SI 1999/2536, SI 1999/3264. See also Distraint by Collectors (Fees, Costs and Charges) (Stamp Duty Penalties) Regulations 1999, SI 1999/3263.

**1141. Service of documents.**

A notice or other document which is to be served on or given to a person under the Stamp Duty Reserve Tax Regulations 1986[1] may be delivered to him or left at his usual or last known place of residence, or it may be served by post, addressed to him at his usual or last known place of residence or place of business or employment[2].

1 Ie the Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711 (as amended): see PARA 1132 et seq ante, 1142 post.

2 Ibid reg 19.

**1142-1200. Appeal against determination of tax.**

A person on whom a notice[1] of determination has been served may, within 30 days of the date of the notice, appeal against any determination specified in it by notice in writing given to the Commissioners of Inland Revenue specifying the grounds of appeal[2]. Subject to the following, the appeal is to the Special Commissioners[3]. Where (1) it is so agreed between the appellant and the commissioners; or (2) the High Court, on an application made by the appellant, is satisfied that the matters to be decided on the appeal are likely to be substantially confined to questions of law and gives leave for that purpose, the appeal may be to the High Court[4]. An appeal on any question as to the value of land in the United Kingdom may be to the Lands Tribunal[5]; and if and so far as the question in dispute on any appeal to the Special Commissioners or to the High Court is a question about the value of land, that question must be determined on a reference to the Lands Tribunal[6].

The Special Commissioners must confirm the determination appealed against unless they are satisfied that it ought to be varied or quashed[7].

An appeal under the above provisions may be brought out of time with the consent of the commissioners or the Special Commissioners[8]. The commissioners must give that consent if satisfied, on an application being made, that there was a reasonable excuse for not bringing the appeal within the time limited and that the application was made after that time without unreasonable delay[9]. If they are not so satisfied, they must refer the application for determination by the Special Commissioners[10].

Any party to an appeal, if dissatisfied in point of law with the determination of that appeal by the Special Commissioners, may appeal against that determination to the High Court[11], which must hear and determine any question of law arising on that appeal and may reverse, affirm or vary the determination of the Special Commissioners, or remit the matter to them with the court's opinion thereon, or make such other order in relation to the matter as the court thinks fit[12].

1 Ie a notice under the Stamp Duty Reserve Tax Regulations 1986, SI 1986/1711, reg 6: see PARA 1135 ante.

2 Ibid regs 2, 8(1). On the hearing of an appeal, the Special Commissioners may allow the appellant to put forward any ground of appeal not specified in the notice of appeal and take it into account if they are satisfied that the omission was not wilful or unreasonable: reg 8(4A) (sic) (added by SI 1994/1813). Regulation 8 has been amended with effect from 1 January 1994 to substitute reg 8(4) and add reg 8(4A), (4B) (see the Stamp Duty Reserve Tax (Amendment) Regulations 1993, SI 1993/3110, regs 1-3); and with effect from 1 September 1994 to add a new reg 8(4A), (4B) without, however, revoking the existing reg 8(4A), (4B) (see the General and Special Commissioners (Amendment of Enactments) Regulations 1994, SI 1994/1813, regs 1(1), 2(1), Sch 1 para 28). Both sets of amendments are in force, and the numbering of the second set of amendments is thus merely a drafting error.

3 Stamp Duty Reserve Tax Regulations 1986 reg 8(2). For the procedure governing appeals to the Special Commissioners under reg 8 (as amended), see the Special Commissioners (Jurisdiction and Procedure) Regulations 1994, SI 1994/1811 (partly made under the Taxes Management Act 1970 ss 46A, 56B (as added; applied by virtue of the Stamp Duty Reserve Tax Regulations 1986 reg 20, Schedule (amended for these purposes by SI 1993/3110)). An appeal lies to the High Court against the summary determination by the Special Commissioners of any penalty pursuant to these regulations; and on such an appeal the court may either confirm or reverse the determination of the commissioners or reduce or increase the sum determined: Taxes Management Act 1970 s 53(1), (2) (substituted and applied by the Stamp Duty Reserve Tax Regulations 1986 Schedule (amended for these purposes by SI 1994/1813)).

4 Stamp Duty Reserve Tax Regulations 1986 reg 8(3). For the procedure governing applications for leave to appeal to the High Court under reg 8 (as amended) see RSC Ord 91 r 1(c).

5 Stamp Duty Reserve Tax Regulations 1986 reg 8(4), (4B) (added by SI 1993/3110). See also note 2 supra.

6 Ibid reg 8(4A), (4B) (added by SI 1993/3110). See also note 2 supra.

7 Ibid reg 8(4B) (sic) (added by SI 1994/1813). See also note 2 supra.

8 Ibid reg 9.

9 Ibid reg 9(a).

10 Ibid reg 9(b).

11 Ibid reg 10(1) (substituted by SI 1994/1813). A new procedure governing appeals from the Special Commissioners to the High Court under reg 10 comes into force on 1 October 1991: see RSC Ord 91 rr 1(b)(iii), 5A.

12 Stamp Duty Reserve Tax Regulations 1986 reg 10(2) (substituted by SI 1994/1813).

## UPDATE

### 1142-1200 Appeal against determination of tax

TEXT AND NOTES--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

References to Special Commissioners are now to the tribunal: SI 1986/1711 reg 8 (amended by SI 2009/56). Where notice of appeal under SI 1986/1711 reg 8 is not given before the relevant time limit, it may be accepted if HMRC agrees or, if it does not, if the tribunal gives permission: reg 8(3) (amended by SI 2009/56). 'HMRC' means Her Majesty's Revenue and Customs: SI 1986/1711 reg 2 (definition added by SI 2009/56). HMRC must accept late notice if (1) the appellant has made a request in writing; (2) it is satisfied that there was reasonable excuse for not giving the notice before the relevant time limit; and (3) it is satisfied that the request was made without unreasonable delay after the reasonable excuse ceased: SI 1986/1711 reg 9(1)-(6), (8) (reg 9 substituted by SI 2009/56). If such a request is made, HMRC must notify the appellant whether or not it agrees to the late notice: SI 1986/1711 reg 9(7).

TEXT AND NOTES 1-7--References to the Lands Tribunal are now to the Upper Tribunal: SI 1986/1711 reg 8(4), (4A), (4B) (reg 8(4A) substituted by SI 2009/56; SI 1986/1711 reg 8(4), (4A), (4B) amended by SI 2009/1307). The Taxes Management Act 1970 s 49D, 49G and 49H (see INCOME TAXATION vol 23(2) (Reissue) PARA 1750A) provide for notification of the appeal to the tribunal; and an appeal may be notified under SI 1986/1711 reg 8(3), (4) only if it could be notified under any of those provisions: reg 8(4ZA) (added by SI 2009/56).

NOTE 2--Drafting error corrected: SI 1997/2430.

TEXT AND NOTES 5, 6--Valuation appeals now lie to the Upper Tribunal: SI 1986/1711 reg 8(4)-(4B) (amended by SI 2009/1307).

TEXT AND NOTES 11, 12--Revoked: SI 2009/56.